Legislative History for Connecticut Act

PA 11-252 PA11-252

HB6344

House	7812-7819	8
Judiciary	1807-1818, 1856, 1862, 1864, 1909-1911, 1915-1916, 1925, 2015, 2017-2019, 2021-2026, 2033-2039, 2084, 2086-2089, 2092-2097, 2161-2211	100
Senate	7171, 7176-7178, 7182-7183	6
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Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate and House of Representatives Proceedings

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PROCEEDINGS
2011

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(Chamber at ease.)

DEPUTY SPEAKER GODFREY:

The House will come back to order. Mr. Clerk, kindly call Calendar 414.

THE CLERK:

On page 47, Calendar 414, Substitute for House Bill Number 6344, AN ACT CONCERNING EYEWITNESS IDENTIFICATION.

DEPUTY SPEAKER GODFREY:

The distinguished vice-chairman of the Judiciary Committee, Representative Holder-Winfield.

REP. HOLDER-WINFIELD (94th):

Yes. Thank you, Mr. Chair.

I move acceptance of the joint committee's favorable report and passage of the bill.

DEPUTY SPEAKER GODFREY:

The question is on acceptance and passage. Will you explain the bill please, sir.

REP. HOLDER-WINFIELD (94th):

Yes. Thank you, Mr. Chair. This is a bill that comes to us. It is a bill dealing with eyewitness identification. As many members of the Chamber may

know, that in cases where we have wrongful identification, about 75 percent of them have to do with the procedure for having a witness identify what would be a potential perpetrator.

This bill looks to incorporate into our statutes the latest scientific and best procedures. There's a large body of peer-reviewed evidence, going back over three decades, dealing with this. We are trying to move in that direction.

There has been in the past some controversy coming out of a study out of Illinois. That study was -- became visible in the year 2005, but that study has since been rejected by large bodies of peer-reviewed evidence. And it was also, in 2007, a blue ribbon panel put together to look at the study that took place in 2005, finding some fatal flaws in the study.

This bill originally had a double-blind procedure for eyewitnesses and a sequential lineup, which is at the cutting edge of where we are in terms of eyewitness identification. Subsequent to the bill being presented to the Judiciary Committee, there was discussion about whether or not sequential lineups would work in the state of Connecticut.

And so what happens in this bill is we have a study of sequential lineups. The study is going to tell us whether or not we should be moving towards sequential lineups, and it includes all of those people who have interest, or who will be affected by the institution of sequential lineups.

So on the panel to look at it, you would have the chief state's attorney, the chief public defenders, the victim's advocate, representative from the Connecticut police chiefs, and the defense lawyers association, and others.

Mr. Speaker, the clerk is in possession of an amendment, which is LCO 5923. I ask that the Clerk call the amendment, and I be granted leave of the Chamber to summarize.

DEPUTY SPEAKER GODFREY:

That Clark is in possession of LCO 5923, which will be designated House Amendment Schedule "A".

Mr. Clerk, please call the amendment.

THE CLERK:

LCO Number 5923, House "A," offered by Representative Fox.

DEPUTY SPEAKER GODFREY:

The gentleman has asked leave of the Chamber to

summarize. Is there objection? Hearing none, please proceed, Representative Holder-Winfield.

REP. HOLDER-WINFIELD (94th):

Yes. Thank you, Mr. Speaker.

So this amendment makes some changes which clarify who we are talking about, and it makes the bill better. So in line 45, it inserts -- where we had the word "participate," after that, the words "or in which the photograph of the person suspected, as the perpetrator, is included. This further clarifies that we are talking about a photo array. In lines 78, it does a -- it does a similar thing using different words, which is, "on all persons whose photograph was included in the lineup."

In line 98, we add to the list that I described earlier of people who are participating in the study, the -- a representative of the state police training school because they have expertise in this area.

And finally, Mr. Speaker, what this bill does is it replaces Section C -- actually it moves Section C down to Section D. And it deals with where this task force would be able to find some funding by allowing the task force to accept gifts, donations, grants, or anything else from public institutions or anyone who

might want to help with funding the task force.

I urge adoption, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

The question is on adoption of House Amendment Schedule "A". Will you remark? Will you remark? If not, let me try your minds. All those in favor, signify it by saying, aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER GODFREY:

Opposed, nay.

The ayes have it. The amendment is adopted.

Will you remark further on the bill as amended? Representative Holder-Winfield.

REP. HOLDER-WINFIELD (94th):

Yes. Thank you, Mr. Speaker.

The Clerk is also in possession of another amendment, which is LCO 7586. I request that the amendment be called, and I be granted leave of the Chamber to summarize.

DEPUTY SPEAKER RYAN:

The Clerk is in possession of LCO Number 7586, which will be designated House Amendment Schedule "B".

Mr. Clerk, kindly call it.

THE CLERK:

LCO Number 7586, House "B," offered by Representatives Rovero, Esposito, Yaccarino, Giegler and Greene.

DEPUTY SPEAKER GODFREY:

The gentleman has asked leave of the Chamber to summarize. Is there objection? Hearing none, Representative Holder-Winfield.

REP. HOLDER-WINFIELD (94th):

Yes. Thank you, Mr. Speaker.

This amendment makes a small change. The report that the task force would do was originally due in February. It would now be due in April. This was because it was felt that there may be more time needed. And in the spirit of cooperation with those who raised the issue, we agreed, and that is why we have this amendment. I urge adoption, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

The question is on adoption of House Amendment Schedule "B". Will you remark further? If not, let me try your minds. All those in favor, signify it by saying, aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER GODFREY:

Opposed, nay.

The ayes have it. The amendment is adopted.

Will you remark further on the bill as amended? Will you remark further on the bill as amended? If not, staff and guests please come to the Well of the House. Members take their seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll call. Members to the Chamber. The House is voting by roll call. Members to the Chamber, please.

DEPUTY SPEAKER GODFREY:

Have all the members voted? Have all the members voted?

While we are finishing up this vote, I'd like to announce that we're going to be moving some bills rather rapidly here with hope. If you'd kindly stay close to the Chamber, and if we can finish our business in an expedited manner, we can go home earlier. So please stay very close to the Chamber.

Have all the members voted? Have all the members voted? If so the machine will be locked. The Clerk will take the tally and the Clerk will announce the tally.

THE CLERK:

House Bill Number 6344 as amended by House "A" and "B".

Total number voting	132
Necessary for passage	67
Those voting Yea	132
Those voting Nay	{0
Those absent and not voting	19

DEPUTY SPEAKER GODFREY:

The bill as amended is passed.

Mr. Clerk, please call Calendar 296.

THE CLERK:

On page 45, Calendar 3 --

DEPUTY SPEAKER GODFREY:

296.

THE CLERK:

Calendar 296, Substitute for House Bill Number 6552, AN ACT CONCERNING THE TRANSFER AND DISCHARGE OF NURSING FACILITY RESIDENTS, favorable report of the Committee on Public Health.

DEPUTY SPEAKER GODFREY:

The Chamber's -- one of the Chamber's favorite nurses, Representative Tercyak.

REP. TERCYAK (26th):

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REP. FOX: Are there any other questions?

Seeing none, thank you very much for your testimony and for bringing this to our attention. It is something we will look at carefully.

SENATOR STILLMAN: Thank you very much.

REP. FOX: Next is Justice David Borden.

THE HONORABLE DAVID BORDEN: Thank you Senator Coleman and Representative Fox and members of the committee. I'm here to testify on Raised Bill Number 6344, an Act Concerning Eyewitness Identification. My name is David Borden. I'm a retired justice of the Connecticut Supreme Court, having reached the mandatory retirement age in 2007, and I now serve as a judge trial referee on the state appellate court, but I want to make it clear that I appeared today here solely in a private capacity. I do not appear as a representative of the judicial branch or of any court within that branch.

While on the supreme court, I was the author in 2005 of the court's opinion in a case called State versus Ledbetter in which the court for the first time took notice of the body of science on the issue of eyewitness identification. Based on that science, the court mandated that when an eyewitness was to be shown a photo or live lineup, it was required that he or she be instructed that the perpetrator may or may not be in the lineup.

And the purpose of this instruction was to reduce the likelihood of what the science terms the relative judgment process. The relative judgment process is the process by which the eyewitness, having been shown say a photo lineup of six photographs of possible perpetrators, tends to choose that photo that

most resembles the perpetrator relative to the other photographs.

In other words, the witness is comparing the photos not to his or her memory of the event, but to each other and choosing which of them most resembles the perpetrator relative to each other. It's like an SAT test in which there is no none of the above listed.

Since leaving the supreme court I've become more deeply interested in and have extensively studied the science of eyewitness identification and its relationship to how our law enforcement institutions and courts deal with the question of the reliability of eyewitness identification.

I've read much of the scientific literature on the subject, have spoken with several of the leading researchers in the field, as well as with several law enforcement officials who are familiar with the science and who have incorporated it into their protocols and have given lectures and made presentations on the subject to interested groups including the judges of the superior court at their annual Connecticut Judge's Institute and at a joint session of the state's attorneys and public defenders. All of this has led me to several conclusions.

First, eyewitness identification is critical to the law enforcement process. In many cases it's the most telling evidence of guilt and the evidence that juries are most likely and most prone to rely on. This in turn means that it's absolutely essential that it be secured in such a way that it is as reliable as we can make it. When it is reliable, it is an essential tool in convicting the guilty.

When it's unreliable, however, it means not only that an innocent person is likely to be convicted, but that just as bad, a guilty person will be left free uninvestigated to continue to commit other crimes. In other words, once an innocent person has been misidentified, the investigation is likely to be discontinued and the real perpetrator is free to commit other crimes.

Thus, it's in law enforcement's best interest to make sure that it follows protocols that will ensure as much as possible that eyewitness identification be reliable. It's also essential that law enforcement, particularly the police departments and the state's attorneys, be persuaded of the propriety of any changes to be made so that any such changes have their full support.

Second, we now know because of the many DNA exonerations in the past several years, that in the area of eyewitness identification we are doing something wrong. Of the approximately 270 DNA exonerations nationwide in the past several years, including several in Connecticut, more than 75 percent involve positive yet false eyewitness identifications. And of course because those were all DNA cases, they by definition do not include the many cases in which there is no DNA evidence such as drive-by shootings, street muggings, convenience store robberies and homicides and assaults in which for one reason or another there is no DNA evidence.

It's likely therefore that there are thousands of other cases in which the conviction was based principally on eyewitness identification and in which the wrong person was identified and the real perpetrator is still at large. Third, the third conclusion is the scientific

community has come to general consensus based on literally thousands of experiments and hundreds of published peer review papers, and that consensus centers on two main points.

One, that an eyewitness identification be administered in a double blind manner. That is, the person administering the procedure should not be the investigating officer or be anyone else who may know which person in the photo array is the suspect. This is based on the universally accepted scientific principles that in order for any scientific test, particularly one involving face-to-face contact between the tester and the person being tested, to be valid it must be double blind, meaning that neither the tester nor the person being tested knows the desired answer because science has conclusively demonstrated that testers with such knowledge unconsciously leak their knowledge to the person being tested by body language, tone of voice, facial expression and other physical manifestations.

This is not a matter of the integrity of the tester, it's simply a matter of human nature. It's why, for example, in a drug trial that's conducted by the FDA the person handing out the drugs cannot know whether he or she is handing out the drug or the placebo because otherwise the test will be considered invalid.

The second point of scientific consensus is that using what is known as a sequential presentation of photos, that is one photo at a time, is a more conservative and generally more reliable method than what is commonly known as a simultaneous presentation of photos, that is, six or eight photos shown at the same time. It's more conservative in that it produces significantly fewer misidentifications of innocent persons than does a simultaneous

presentation.

Its only drawback is that it does produce somewhat fewer misses on the identification of the actual perpetrator than does the simultaneous presentation. The scientific community therefore considers the question of whether to use the simultaneous or the more conservative sequential process as a matter not of science but of policy.

Now this brings me to what law enforcement is currently doing, not only by choice and custom but because it's what the courts, including the United States Supreme Court, have been requiring since 1977 when the Supreme Court issued its landmark decision in Manson versus Brathwaite. Law enforcement has not generally been using double blind administration and generally has been using simultaneous rather than sequential presentation of photos in eyewitness identification procedures. Thus, there's the disconnect between what the science tells us and what we are doing, and what we are doing is resulting in unreliable results in many cases.

What then should the State of Connecticut do about this? One approach is that taken by Raised Bill Number 6344. Admirably this bill sets out protocols for both double blind administration, where practicable, and for sequential rather than simultaneous presentations, and all other things being equal, I would support such a bill.

And by the way, the reference to where practicable, I should tell you that what I have learned is that it's almost always practicable because even in a one-person police department, there are readily available and inexpensive computer programs that are being used in other

jurisdictions that make it very easy to use double blind presentation.

But as I said, all other things being equal, I would support the bill, but as in most areas of life, all other things are not equal. What is missing is the factor that will produce the necessary buy-in, the cooperation, if you will, of law enforcement the process that will expose law enforcement personnel in this state to the science and convince them that it is in their job's best interest which is to convict the guilty and leave the innocent alone, to change their procedures so as to produce the most reliable eyewitness identification that can be produced, that is to treat one's memory like crime scene evidence with an imaginary yellow tape around it so as to avoid corruption of the evidence.

I believe that the most effective legislative way to accomplish this necessary cooperation rather than to mandate these procedures now is instead to create a legislative task force to study the science in the next two years and then report back with a series of recommendations of best practices for law enforcement and the courts to follow in the area of eyewitness identification. And I have been working, in fact, with Senator Looney and with Kevin Kane on just such a proposal. This is the course that has been followed by most of the jurisdictions that have adopted the protocols of both sequential and double blind procedures.

This task force should gather and review all of the science on the issue of eyewitness identification in an unbiased and dispassionate manner. It should be composed of all the stakeholders, legislators, the chief state's attorney and state's attorneys, municipal

chiefs of police and trainers, the chief public defender and public defenders as well as a representative from the Innocence Project, the judiciary and the victims' advocate, and I suggest you should also include a dean of one of our state's law schools and one or more social scientists.

With a broad-based constituency like this, the task force's recommendations will carry great weight, will be persuasive, will I believe help immeasurably in bringing Connecticut's procedures appropriately into harmony with science and will most importantly help to bring the guilty to justice and leave the innocent alone. I therefore urge that this course of legislative action be adopted. Thank you.

REP. FOX: Are there questions of Justice Borden?

Representative Holder-Winfield.

REP. HOLDER-WINFIELD: Thank you for joining us this morning, Justice Borden.

I just want to be clear. You're testifying that the scientific community is largely in agreement that the things within this bill are the way to go. I believe you're also testifying that it has happened in other places. And your testimony is that but for the fact that there's inertia, we would be doing what is in this bill.

THE HONORABLE DAVID BORDEN: I wouldn't call it inertia, Representative Holder-Winfield. I think it is my view, and I talked to some of the researchers, that there has been scientific consensus reached on these points.

But like any scientific question, that's not

universal and there are some who disagree, and it's my point that the law enforcement community generally has not yet been I think appropriately exposed to this science, and I think that once they are, once they are brought into the process as well as the public defenders and the victims advocates and the Innocence Project and the legislators, all the stakeholders, once that has been done, and it can be done I think readily and easily in a two-year process, then everybody will be on board and I think we'll have a more solid foundation for the best practices.

I'm not criticizing the protocols in this bill. I think that they are good. But I think that because this is primarily a law enforcement process, I think the law enforcement people should be brought into it so that they can have their say and maybe the skeptics will persuade some on the task force about certain detail.

Another advantage of having the task force created is that it can bring in people from other states who are already using these programs who have training materials and who have experience in training the law enforcement people, the policemen and the state's attorneys, but principally we're talking about police departments and police trainers, they have the materials available. They can be brought in and subjected to examination and skepticism, if there is any, and let the chips fall where they may. I believe the chips will fall on the side of these protocols, but I think it's important that law enforcement also believe that, and I think that's one way to do this.

REP. HOLDER-WINFIELD: Do you happen to know if there are any jurisdictions where we currently follow the protocols within this bill in this

state?

THE HONORABLE DAVID BORDEN: In this state?

REP. HOLDER-WINFIELD: Yes.

THE HONORABLE DAVID BORDEN: I don't know of any. There may be. Kevin Kane may know of some, but I don't know if there are any in this state. I do know roughly which jurisdictions outside the state have been following these protocols, but I don't know of any in this state.

REP. HOLDER-WINFIELD: Thank you for your testimony.

THE HONORABLE DAVID BORDEN: Sure.

REP. FOX: Are there other questions of Justice Borden.

Representative O'Neill.

REP. O'NEILL: In your testimony you indicated that the sequential approach has all sorts of positive effects, but you did cite one thing and I'm not quite sure I understood exactly what you were referring to that it has this one drawback, something of -- and I wasn't quite sure what that was. Could you explain that to me?

THE HONORABLE DAVID BORDEN: Sure. And when I say, "the science," this is all based on a series of, as I say, thousands of experiments where they had actually set up eyewitness identification procedures mainly with graduate students. These are done in psychology departments at research universities and they know who the real perpetrator is, they have a, you know, a scene, so you know who the real perpetrator is. And what they found is if you use the sequential procedure, which is one at a

time, is this the person, is this the person, you have significantly fewer misidentifications.

In other words, significantly fewer times will they pick out an innocent person. However, it also does on the other side of the coin it means where the sequential as opposed to the simultaneous where the real perpetrator is in the series shown one at a time, you get not significantly but somewhat fewer, somewhat fewer times where the witness will miss, will not identify the real perpetrator in the sequential as opposed to the simultaneous.

And that's why the scientists say, look, whether you use one or the other is not a matter of science, we know what the science said, it's a matter of policy. Now one answer to that policy question goes back to what the lawyers on the committee and I learned in the first year of criminal law the principal that it's better that one guilty person go free than ten innocent people be -- that ten guilty people go free than one innocent person be convicted.

And basically with the sequential you're going to get somewhat fewer mis -- somewhat fewer lack of identification of the actual perpetrator, but you're going to get many fewer misidentifications of innocent people. That's what the science tells us.

REP. O'NEILL: Okay. So in -- let me make sure I understand. There will be fewer identifications of anybody, most of the nonidentifications -- there will be fewer erroneous identifications, but there will be somewhat fewer accurate identifications as well, correct identifications?

THE HONORABLE DAVID BORDEN: There will be somewhat fewer accurate identifications of the actual perpetrator. There will be many many fewer misidentifications of an innocent person. That's the best way I can put it.

REP. O'NEILL: Okay, thank you.

REP. FOX: Representative Holder-Winfield again.

REP. HOLDER-WINFIELD: Justice Borden, just to clarify because I think that point you just tried to clarify for Representative O'Neill sometimes trips people up. So the fact that an individual, or in a study, group of individuals, is likely at some point not to identify the guilty person within, that's what we would expect to see, correct, in a study such as this?

THE HONORABLE DAVID BORDEN: That's correct.

REP. HOLDER-WINFIELD: Because that speaks to the way that people perceive what they're seeing in front of them, right? So this is an expected outcome of this?

THE HONORABLE DAVID BORDEN: Yes.

REP. HOLDER-WINFIELD: Okay. I just wanted to make sure. Thank you.

REP. FOX: Thank you, Justice Borden. And if I just may -- I recognize that it's somewhat unusual for you to come here and testify before the committee, so I just based upon that alone, we recognize that this is an issue that is important to you and one that I can tell you want to see us get it right. During your career I don't know how many cases you've been a part of, but many of them were appeals of verdicts that came down in a criminal court,

and I'm certain that many of those verdicts were based upon eyewitness identification testimony.

THE HONORABLE DAVID BORDEN: Absolutely.

REP. FOX: And so just based on the fact that you're here, I recognize that you've proposed getting a group together with the anticipation that we could enact something in two years that would be meaningful, but I assume because you're here that you do feel that the issue of eyewitness I.D. is something that we do need to address.

We had a lengthy public hearing on Monday where individuals came forward who had been wrongfully incarcerated for decades, and we had representatives from the Innocence Project testifying, and overwhelmingly the big concern there is a faulty witness I.D., and that seems to be one of the primary reasons why people are wrongfully convicted.

So it is something that we will look at carefully, and just the fact that you're here alone to testify on it recognizes, at least to me, that it's an important issue that we want to try and get right, so thank you.

THE HONORABLE DAVID BORDEN: Thank you very much.

REP. FOX: That has wrapped up the first hour, so what we'll do is we will alternate from members of the public back to the public officials. The first member of the public will be Brian Carlo.

Good afternoon.

BRIAN CARLO: If I may -- and this is really sort of following Mr. Kane's lead -- I do have with me -- and I understand the new rule.

Secretary and I respectfully submit our approval and support for this bill. Thank you and I'd be happy to answer and questions you might have.

REP. FOX: Thank you, Attorney Klaskin. Are there any questions from members of the committee? Senator Meyer.

SENATOR MEYER: Thank you, Mr. Chairman. Just a comment. Seth, you're a very distinguished constituent of mine and I compliment you on the great job you've done having the business section of the Secretary of State's office and just wish you a lot of continued success. And thanks for your testimony here. I think most of the members of the Judiciary Committee are going to agree with you.

SETH KLASKIN: Thank you.

REP. FOX: Any other questions from members of the committee?

Thank you very much.

SETH KLASKIN: Thank you.

REP. FOX: Next we have Chief Anthony Salvatore. Good afternoon.

JAMES STRILLACCI: Good afternoon, Representative Fox, members of the committee. I'm Jim Strillacci, police chief from West Hartford, Tony Salvatore Chief from Cromwell, we represent the Connecticut Police Chiefs Association. We're here to speak on several bills today.

First, the Connecticut Chiefs support House Bill 6368. This was our suggestion. This is about returning stolen property. Under current

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Many agencies are going to be deterred by the cost as well. It's not easy to prepare an interview room. You need to sound proof it, you need to wire it so that you capture both the subject and the officers. You need to buy and install the cameras, the microphones, the wiring, the storage and retrieval devices. You've got to train your personnel.

We're not sure whether we're going to required to transcribe the statements made and transcription, from what we understand, is quite expensive. We'd certainly entertain funding to promote this promising practice, but we would certainly object to requiring it without any assistance in complying with that requirement.

We also oppose H.B. 6344 regarding eye witness identification -- bless you, Senator. Many of its provisions we're doing already. We got together with the State's Attorney, a number of Chiefs and came up with measures trying to reduce any suggestion from our procedures. We didn't use quite all that are listed in this bill but we did that intentionally. We omitted the blind administrator for a reason, because in many smaller departments it is harder to find somebody who either is not involved in a case or doesn't know about the case, especially if it's notorious.

Judge Borden mentioned a computer program. I don't have one. I don't know who does, but if somebody wants to buy one for us, we'll certainly look at it.

We omitted sequential administration for a different reason because research -- I respectfully disagree with Judge Borden. The research is not conclusive, the scientists are not in agreement. It's very easy to go online

would know that the person has or hasn't given the DNA sample. And then the court would be able to use that information in deciding what level of security the person would be placed at assuming that they're committed to the PSRB.

Similarly, the PSRB in subsequent hearings would be able to ask these questions. All of the PSRB hearings about patient movements out of maximum security to lesser security are all adversarial hearings at which the State's Attorney is represented, the public defender is represented and all of the board members can ask questions. So they would be able to take that into consideration as well in deciding whether to give a particular acquittees a lesser degree of security than their current placement.

So that's the essence of what we're asking for. If there are any questions I'd be happy to answer them.

REP. FOX: Thank you for your testimony. Are there any questions or comments from members of the committee? Seeing none, thank you very much.

Next is Senator Martin Looney.

SENATOR LOONEY: Good afternoon, Senator Coleman and Representative Fox and members of the Judiciary committee. My name is Martin Looney. I am the state Senator from the 11th District and the Senate Majority leader.

And I'm here today to testify in support of two bills. First, Senate Bill 954, AN ACT CONCERNING THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS and secondly, House Bill 6344, AN ACT CONCERNING EYEWITNESS IDENTIFICATION.

Regarding the custodial interrogation recording, I believe that this procedure would be something that would protect both police and suspects in the interrogation process. And this bill, Senate Bill 954, would move our state in this direction.

While historically law enforcement officials have viewed taping of confessions with some trepidation, once they begin the process many of them become advocates for it. Our Chief State's Attorney, Kevin Kane, has been helpful in increasing the use of taping custodial interrogations and trying to help create a few pilot programs in the state.

And also, I would be happy to share with you a report from the Northwestern University School of Law of police experiences with recording custodial interrogations that points out that police who become familiar with this system become supportive of it because they realize that it actually helps them, as well, to avoid accusations of improper conduct in the course of interrogations.

The second bill, House Bill 6344, AN ACT CONCERNING EYEWITNESS IDENTIFICATION, I'm testifying in a way that is both supportive of and would draw your attention to the testimony of Justice David Borden earlier today on that same bill. This is clearly an issue of great significance because everyone involved in the criminal justice system is aware that eye witness identification can be a double edged sword. It is prone on the one hand to stunning inaccuracy but at the same time is often the most compelling testimony in the courtroom.

So therefore we have an obligation to insure that this testimony is as accurate as possible. And House Bill 6344 would reduce the

probability of error or undue influence by law enforcement by, among other things, requiring that the line up or photographs be shown in sequential order rather than simultaneously and that when people -- when possible the person conducting the identification procedure should not know who is in the lineup or photographs and should not know who is the suspected offender and that the fillers in the lineup generally fit the description of the suspected offender.

This is in line with what Justice Borden mentioned earlier today about the problem with the so-called relative judgment process, where often when people are looking at a group of photos together, they tend to choose the photo that most resembles the perpetrator relative to the other photographs, not necessarily looking at them distinctly and independently of each other. So I think that that's the best way to make the most positive change regarding eye witness identification would be to enact these provisions.

I've been working with Justice Borden and Chief State's Attorney Kane, also, on a bill that would create a task force to research current scientific knowledge as well as current best practices. The task force would create recommendations for law enforcement best practices and could be the basis for legislation if they were not adopted voluntarily by law enforcement. And this is something that I think would help to create a consensus if the committee is not willing to move forward on the individual specifics of the bill this year. Thank you, Mr. Chairman.

REP. FOX: Thank you, Senator Looney. Are there questions? Senator Kissel.

REP. HOLDER-WINFIELD: Good afternoon, Senator. I just want to make sure I have your testimony straight on 6344. So you are not suggesting that we necessarily should do the study. You're saying that if we don't choose to pass the bill, you're looking at a study as an alternative, am I correct?

SENATOR LOONEY: Well, I'm looking at both. I think that the -- if there is a consensus on making all these reforms immediately I think that's a great idea. But my understanding is from conversations with Mr. Kane and others that they would support the idea of a task force because in a dialog with Justice Borden and Mr. Kane, there was some -- Mr. Kane was of the opinion that some areas there was not a scientific consensus on what best practices were.

And if that's the case, the task force could be beneficial. But if there is a unanimity of will to move forward on the specifics, all the better.

REP. HOLDER-WINFIELD: I was going to only ask you that question, but I suppose since you've been in conversation with them, if you could tell me if you know what areas Attorney Kane is talking about. I don't happen to know where the dissension is amongst the scientists.

SENATOR LOONEY: Well, I'm sure he can speak for himself. I wouldn't want to give those specifics. I'd let him discuss it. But there were a couple of areas I think, in terms of the psychological impacts of different kinds of presentations. He had expressed the idea that some of those issues were still controversial within the law enforcement profession, whereas Justice Borden was fairly clear that there was a general scientific consensus on some of those

areas as to what -- that the questions had been decided. And Mr. Kane said he wasn't quite certain of that. So out of that came a discussion about possibly the task force could get everyone on the same page.

REP. HOLDER-WINFIELD: Okay. Thank you and I will direct my questions to Attorney Kane.

REP. FOX: Thank you, any other questions for Senator Looney? Thank you.

SENATOR LOONEY: Thank you, Mr. Chairman.

REP. FOX: Next is Susan Giaccalone.

SUSAN GIACCALONE: Good afternoon, Representative Fox, Senator Coleman and members of the Judiciary Committee. For the record, my name is Susan Giaccalone. I'm here on behalf of the Insurance Association of Connecticut. And I promise to be your shortest speaker of today.

I'm here -- I'm opposing two bills, House Bill 6492 and 6493. 6493, very quickly, just is seeking to permit an appeals process in small claims. We already have a system where you can repeal and remove the case to the regular docket and you preserve your right to appeal. Small claims are set up to be a one and done, quick, concise, easy, simple docket. Appeals process you have to have alternate things in place to take it out of small claims.

6492 is AN ACT CONCERNING THE ADMISSIBILITY OF MEDICAL BILLS IN CIVIL ACTIONS. We've seen this bill before and have rejected it before. This bill would simply -- would like the ability for plaintiffs to enter into evidence the actual full bill of a doctor whether or not it's what they paid. Many times doctor's bills are cut because of insurance, because of a deal

ANDREW SCHNEIDER: Thank you. It was an important issue, thank you.

SENATOR COLEMAN: Michelle Cruz.

MICHELLE CRUZ: Good afternoon, Senator Coleman and distinguished members of the Judiciary Committee. My name is Michelle Cruz and I'm the state Victim Advocate and I run the Office of the Victim Advocate.

My office has submitted numerous volumes of written support and opposition to various bills today. However, what I will do today is I'll just comment on some of the highlights on a few bills and then read the testimony on two more important bills that relate to victims.

First of all, I just want to comment on the Office of the Victim Advocate did provide supportive testimony on House Bill 6537 regarding speedy trials. The victims in the state of Connecticut have a right to a swift disposition in their case and this would assist in those misdemeanor cases. The only addition that the Office of the Victim Advocate would ask for is in cases where an offender is challenging the speedy trial right, instead of immediately releasing that individual, the Office of the Victim Advocate would ask that a prompt bail or bond hearing be allowed to address the incarceration of that particular individual. The reasons for that are described in our testimony as well.

SB954
SB1099
HB6367

With regards to witness ID which is House Bill 6344, as a testimony today already suggests, there are best practices that will guide witness identification. But as you've heard for a myriad of reasons, codifying these guidelines is not desirable at this time.

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but you get cases where the victims are legitimate. You have a neighbor who's -- or somebody is assaulted. It's only a misdemeanor but there's a real victim who's been assaulted and wronged. The defendant says they didn't do it. Then it was good -- in the old days it was good to have been able to give them their day in court.

SENATOR COLEMAN: And I think that's my point. You do have cases where it's -- somebody has to (inaudible) and rather than to have those cases linger on a docket for a prolonged period of time -- I think it would really be nice to have court trials but I guess that decision is up to the defendant and counsel.

CHIEF STATE'S ATTORNEY KEVIN KANE: It is.

SENATOR COLEMAN: But it would be something that I certainly would be in favor of having some mechanism for excusing those kinds of cases from the dockets. Thank you.

CHIEF STATE'S ATTORNEY KEVIN KANE: Thank you.

REP. FOX: Next we have David Cameron. Is Mr. Cameron still here?

DAVID CAMERON: Good evening, Representative Fox and Senator Coleman and members of the committee and I appreciate the opportunity to be here again this year and to testify, even at this late hour after about seven hours. It's been quite an unusual day, though, in some of the testimony we've heard.

I'm appearing in support of three bills. I've submitted testimony to you, 954, on the custodial interrogation recording, 6344 on the eyewitness ID and 6489 on AN ACT REQUIRING DNA

reception to that among many more people today than in previous years.

The first, I think it's extending the database that would increase the likelihood that a number of unsolved and long unsolved cases would be solved. I think, secondly, this would prevent a number of repeat offenders from continuing to commit their crimes. And third, I think this would enable some wrongful convictions to come to light and lead to exoneration.

I think all of those are very important reasons. I think each one in itself is sufficient, but I think the three taken together makes this legislation that should be adopted, notwithstanding the very serious privacy issues that come up repeatedly and you heard some spokespeople speak about those today.

But I would like, in my brief remaining time just to say a word or two about the two other measures, custodial interrogation and eyewitness ID. These are very important measures, I think, for preventing wrongful convictions.

SB954
HB6344

The Innocence Project has found in its analysis of the 266 cases in which there has been an exoneration because of DNA that by far, the most frequently occurring cause of wrongful conviction and a cause that appeared in over 75 percent of all their wrongful conviction cases were eyewitness misidentification. And they propose a number of reforms to improve that and most of those reforms are in this bill. And -- and in 6344 -- and there's one exception, though, and I would urge you to consider including it, which is recording the eyewitness identification process itself. That's

something that the Innocence Project supports and I think there's good reason for it and I spell it out in my testimony. I won't take your time to spell that out today.

My position on this is that if you could actually develop this as legislation, that would be wonderful. But I have a sense that there is some concerns with regard to the mandating requirements that would be involved and the complications of small departments and so forth and leading to the possibility that that act would not, in fact, be approved.

If that's the case, I think it would be very helpful to support the task force that Attorney Kane and Senator Looney spoke about -- and Justice Borden -- have been working on together and have been talking about. A task force that would develop best practices for eyewitness identification procedures.

You will see in my testimony I'm a little bit on the fence and undecided about the sequential versus simultaneous presentation issue. In the appendix to my testimony, I include a discussion of the Mecklenburg study in Chicago and the Hennepin County study in Minneapolis. And I think the scientific studies are basically on the side of sequential presentation in terms of you might say, reducing the numbers of false positives. But it is an issue of debate and there's contention about it and disagreement. And the Innocence Project, just to note, has separated that issue from the other issues.

Certainly the most -- single most important issue it seems to me is the double blind administration. That's absolutely essential and I've seen that firsthand from witnessing trials in the New Haven area that it's very

important to have a double blind administration.

I would also urge all of the other measures in this bill, but there is this question about sequential versus simultaneous. And I think that is one reason why law enforcement authorities might not be willing to support this bill in its current form. And if that happens and that's the case, I would urge that you support the idea -- the task force that Senator Looney has spoken to you about today.

The third bill was the act concerning electronic recording of custodial interrogations. And the only thing I would point out to you is that I think there were a number of misstatements in previous testimony. For example, this would not necessarily preclude a spontaneous statements or voluntary statements. It would not preclude testimony if a recording was not feasible. There is a long list of exceptions in the event a prosecutor wishes to present testimony without a recorded interrogation. But there is a presumption that there -- the prosecutors would have to demonstrate by a preponderance of evidence that the statement was voluntary. And that's a general rule in many of the 18 states that now require or mandate or have courts that have strongly encouraged the recording -- electronic recording of custodial interrogations.

SB954

So with that, I will stop and if you have any questions, I'd be -- I'll try to answer them.

SENATOR COLEMAN: Representative Holder-Winfield.

REP. HOLDER-WINFIELD: Thank you, Mr. Chairman. It's good to see you and I just wanted to thank you because I have seen you over and over again coming back so thank you and I would have

police records can be passed before being released, such as exemptions for uncorroborated allegations of criminal activity, the identities of informants, investigative techniques not otherwise known to the public, medical information and invasions of personal privacy. These have been adequate protections for police materials in the past and we would expect them to continue to be so.

The actions of the police are an area of government authority where legitimate public interest is added. Though rare, cases will inevitably arise in which the public demands close scrutiny of an investigation that includes a recorded interrogation that has not become public in court.

A person questioned by the police may want access to the recording of his own interrogation. We believe that such recordings should meet the same tests for exemption as other material in police files and that adoption of this beneficial technology -- recordings -- should not upset the present balance of public access to police information.

So basically, new technology, same rules. Basically, the same information, we see no reason why a new broad Freedom of Information Act exemption should be added.

SENATOR COLEMAN: Are there questions? Seeing none, thank you, Mr. Albert, for your patience and your testimony.

Jeff Kestenbrand?

JEFF KESTENBRAND: Good evening, Mr. Chairman and other members of the Committee My name is Jeff Kestenbrand. I'm here as a member of the Connecticut Criminal Defense Lawyers

HB6344

Association to testify in support of Raised Bill 6344, AN ACT CONCERNING EYEWITNESS IDENTIFICATION. CCDLA supports and strongly recommends passage of this raised bill. The procedures that it outlines with specific emphasis on double blind identification procedures and sequential over simultaneous procedures have been adopted in several states, including those that neighbor our own, such as Massachusetts and other states like New Jersey, North Carolina. Similar legislation is currently pending in Rhode Island.

And frankly, it's good legislation. It goes without saying that any time less reliable eyewitness procedures are used, there's a great chance of an innocent person being arrested, prosecuted, convicted and punished, and with the possibility of decades in prison, depending on the charge. And at the same time the real perpetrator of a crime is left free to continue to victimize society.

So from that standpoint this legislation truly fits what can be colloquially referred to as tough on crime legislation. It has benefits for the innocent and it also tremendously benefits society by increasing the chance that guilty people will be arrested, prosecuted and punished.

From a financial standpoint, this bill makes a lot of sense. When procedures are used to try to obtain an eyewitness identification from a witness and those procedures are not inherently reliable, certain things happen in the justice system.

I can tell you from personal experience if I have a case like that, I immediately call experts. And in speaking with these experts, their rates typically start at about $250 an

hour. That's a cost that's often passed on to the taxpayer if a public defender is representing the person or if a special public defender has been appointed to represent the person who is charged. Additionally, the court's time is taken up both through the preparation of motions, court time to adjudicate those motions, judges have to paid, prosecutors have to be paid, court staff such as a court reporters and monitors have to be paid.

I'm understanding that the bell went off, I'll address two of the specific parts of this bill that are very important. One being double blind procedures. The research is overwhelming in this area that double blind procedures are more reliable than no blind procedures. Double blind, of course, meaning that both the witness and the police officer who's administering the photo array do not know who the suspect is.

There is a great historical example that demonstrates the importance of double blind procedures. Around the turn of the last century, I think in Germany, there was a horse named Clever Hans. Clever had its ordinary spelling, Hans was spell Hans. This was a horse who could do math. The horse could add, subtract, multiply, divide as well as do other mental tasks.

And as Clever Hans' fame grew from this extraordinary ability, people looked a little closer. And what they realized was that the horse wasn't actually performing the mental tasks and the math that everybody thought. But he was picking up on subtle physical cues from either his trainer or the person asking the particular question.

So for example, if the question was what's there plus four, the horse would tap its hoof until it got to seven and what it was picking up in certain situation was the kind of tension the questioner had waiting to see if the horse would stop. And when the horse would get to the right answer and it did stop because the tension was relieved from the questioner's physical demeanor, whether facial characteristics or body movements.

What the research has shown is that the Clever Hans affect applies to either misidentification and to the procedures that are used when the police officers who administers the array does know who the suspect is. Either consciously or subconsciously, clues are given off to the witness that undermine the reliability of the subsequent identification.

The second area that this bill addresses is a very important area and this science is regarding sequential versus simultaneous arrays. When somebody is presented with a simultaneous array of eight people, there is a natural inclination to engage in what is called the relative judgment process where you're not necessarily picking the person who you recognize as being the one you saw at the crime scene but the person who most looks like the person you saw. The sequential process eliminates that possibility from happening.

There are numerous studies in this area. Lisa Steele, also an attorney in CCDLA submitted written testimony citing the tremendous amount of studies that support the science that underlies this bill.

I just want to focus on a couple of areas where the bill needs a little bit of work. One issue is that it doesn't provide a remedy at all if

the police don't engage in the proper procedure. While I haven't read the proposed legislation concerning the recording of custodial interrogations, my understanding is that that proposed bill provides for a rebuttable presumption that a statement made during such an interrogation would not be admissible at trial if the interview or interrogation was not recorded. And I would suggest that the same rebuttable presumption should apply when an improper eyewitness procedure has been used. Because otherwise, the bill, even if it's passed won't have much of an effect if there's not a remedy.

Three other areas I want to hit on quickly is the definition of eyewitness in subdivision one. It states "An eyewitness is a person who observes another person at or near the scene of an offense." And I would suggest to you that the language "at or near the scene" can be removed and could end up leading to confusion. If you saw something, you're an eyewitness. The problem with the language that's used is what does "at or near the scene" mean? If you're 200 feet away are you "at or near the scene?" If you're 500 feet away are you "at or near the scene?" If you saw something and you have something to say about it, you're an eyewitness.

Subdivision six states that at least five fillers shall be included in the photo lineup and at least four fillers shall be included in the live lineup in addition to the person suspected as the perpetrator. I would argue to you that a total of six people is not enough.

Customarily photo arrays consist of eight people, which, arguably, isn't enough either. Even in an eight person photo array you have a one in eight chance of randomly picking

somebody even if you have no idea what you actually saw. And certainly one in six only increases the chance of an incorrect identification.

Finally, subdivision 13 states if the eyewitness identifies a person as the perpetrator, the eyewitness shall not be provided with any information concerning such a person -- and this is the problematic language -- "prior to obtaining the eyewitnesses statement that he or she is certain of the selection."

The way I read this, what it's saying is if I'm an eyewitness and I picked the correct person out of a photo array at the point at which I've done that the police officer who is administering the array can tell me, "You got the person who did this." The problem with that is that it taints any subsequent identification that will occur in court. If the police officer tells the witness that they picked the correct suspect that the police officer believes, any later identification in court may be enhanced by that information. The witness may be more confident in his or her identification based on the information provided by the officer.

So what the legislation should say is that the witness should not be told anything about his or her identification. The witness shouldn't be told whether the identification is who the officer thinks or is not who the officer thinks. Because at a point later in time in court that witness needs to be as objective as possible without the taint of extraneous information concerning the police investigation.

SENATOR COLEMAN: Any questions for Ms. Harvey? Senator Gomes, do you have a question? Because you're smiling so broadly.

SENATOR GOMES: (Inaudible).

LARESE HARVEY: Because he accused me of writing someone's name -- but I do appreciate you correcting my grammar.

SENATOR COLEMAN: It was my opportunity to reverse the role. Representative Hewett.

REP. HEWETT: I agree with your bill one thousand percent.

LARESE HARVEY: Thank you.

REP. HEWETT: Even though you didn't take a swab.

SENATOR COLEMAN: Any other questions? Seeing none, I guess we'll furlough you for now.

LARESE HARVEY: Thank you.

SENATOR COLEMAN: Regio Stephens is next. Greg Marchand? Angel Morales? Rebecca Brown?

REBECCA BROWN: Good evening, Chairman Coleman, Chairman Fox, members of the committee. My name is Rebecca Brown, I'm a policy advocate with the Innocence Project. And I thank you for the opportunity to testify tonight. I just want to speak to two of the bills, House Bill 6344 and Senate Bill 954.

As you know, the Innocence Project settles claims of innocence using DNA technology, and to date, there are 266 DNA exonerations across the country. 75 percent of them involved misidentification. And you've heard a lot about James Tillman. He also was

misidentified. He is a Connecticut exoneree. He served 16 and a half years in prison for a crime he did not commit.

Misidentification, though, harms everyone, not just the innocent who suffer the unique horror of wrongful conviction. It harms the police who find that their investigations are impeded or hindered by focusing on the wrong person. It really harms prosecutions because when investigations are refocused the witness is rendered unusable or less useful at trial. And the community suffers because the real perpetrator is at large.

And we've actually been able to collect data on the real perpetrators connected to our cases and the data on eyewitnesses is that among 198 cases that involved misidentification and DNA exonerations, 72 resulted in the identification of the real perpetrator. So this is -- actually there is a public safety reason for doing this as well.

The only person who really gains from a wrongful conviction or a misidentification, I should say, is the real perpetrator. And this is a national phenomenon. It doesn't stop at any state borders. And why is that -- it's because there is fallibility of memory and suggestibility. And traditional protocols that we use in lineup procedures do not safeguard against these things.

And misidentification quite simply is the single largest cause of wrongful convictions. And it's a major problem that has some pretty simple fixes all of which are contained in House Bill 6344.

The good news is that there's been over 30 years of social science research in this area.

We heard earlier about a report that came out of the National Institute of Justice in 1999. This was a group comprised of all corners of the criminal justice community, representatives from all corners came together and made a series of recommendations, but there has since been 12 more years of research, all of which support the critical reforms that are included in this bill. Like blind administration and this is a truly uncontroversial reform.

I've submitted also to the committee an exhibit which goes through a lot of the social science research that supports all of these reforms and citations connected to that. But I -- you know, I'd just like to bring attention to just a couple of the very important provisions in this bill.

Blind administration really reduces the opportunity for queuing even inadvertent queuing. And I think that that's a very important point because a lot of times people feel that this is an attack on law enforcement integrity when in fact, it's really an effort to do what we do in all scientific experiments, which is to make sure that the person administering the test doesn't know what they're testing. Like in a drug trial, which you heard about earlier, it's just a fundamental scientific principle.

And one note that I'd like to make is that there are two laws in the country now -- in North Carolina and Ohio both -- that even include provisions around using a folder shuffle. The folder shuffle method is a method used to effectively blind an administrator in a small department where they just don't have the manpower to get a second administrator to do the lineup. And what they do is they just put all the members of the lineup in separate

folders and they shuffle it. There are ten folders, four of them are dummy folders which are empty so that the eyewitness doesn't know how many folders they're about to look at. But what it really does is it blinds the administrator who does know the identity of a suspect and it makes it practicable and workable for those small departments.

So we often hear, "Oh, we can't implement this because our department is just too small." You know it's a one man department, a two man department. The folder shuffle has been shown to allow us to use blind administration and to effectively blind the administrator.

Proper filler selection is critical. Making sure that the fillers and non suspect photos match the description that was provided by the eyewitness of the perpetrator, giving instructions to the eyewitness.

And I won't go through all of the rationale because I have submitted and exhibit to you about the -- which describes the scientific underpinnings for all of these. But confidence statements are also critical and it is contained in this bill and I can't overstate its importance. And the reason is because confidence is highly persuasive but it is not correlated to accuracy. And confidence is easily inflated and feedback distorts memory. And what a confidence statement does is it simply just takes a statement of someone's certainty at the time they make the identification and it locks in time what that person said about how confident they are in that identification and it's critically important.

And I'll just go very quickly, just to address the sequential presentation because we've heard

before about the Mecklenburg report. This was a report out of Illinois which capped basically the sequential presentation of lineup members. And since that time, another report was issued by a blue ribbon panel which included a Nobel laureate which really discredited that report because it said the methodology was so flawed that the findings of that report could not be trusted.

And I'm happy to answer questions about what was flawed in that study, but I won't take up more of the Committee's time.

And I'll just touch very quickly on the recording bill now, but we strongly support this bill.

The eyewitness bill. I've also heard mention the task force bill which could be a fabulous compliment to the bill that I just described to you, just in terms of how to implement the bill and maybe monitor the provisions in this bill. But the two taken together might be an excellent option.

But truly, the proscriptive elements in House Bill 6344 really speak to the best practices that, you know, are supported by tons of scientific research for over a 30 year period.

And on Senate Bill 954, you've heard about the fact that there's a ton of law enforcement support for this reform and it's not uncommon for there to be some opposition in the beginning before people put this into effect. But once this reform has been implemented there's been a uniformly positive response by law enforcement to this reform because it helps them to really nail convictions.

And now over 750 law enforcement agencies around the country record interrogations. In 2004 a former US attorney took a survey of all the law enforcement -- or I'm sorry, 238 law enforcement agencies around the country asking them about their experiences with this. They all reported that they were extremely happy with it. They articulated a number of benefits.

And I just want to add that section 1E2 creates an exception when it isn't feasible to record. So this needn't be a costly bill. This could be a bill that is simply implemented as is and as people get recording equipment they will just simply record interrogations. But I just -- I think the time is now. 25 percent of the nation's 266 DNA exonerations involved a false confession or some sort of admission of guilt. It's a leading cause, a major contributing factor to wrongful convictions. And I think both of these reforms are really critically needed.

So thank you and I'm happy to answer any questions.

SENATOR COLEMAN: Thank you. Representative Holder-Winfield.

REP. HOLDER-WINFIELD: So I take it you talked to us about the studies, the blue ribbon study a little bit and tell us about what it found, the Mecklenburg study.

HB6344

REBECCA BROWN: Sure, so the Mecklenburg study was a study of a pilot program that took place in Illinois, it was three jurisdictions that were testing the blind sequential method. It was Evanston, Jolliet and Chicago. And what the report found was that the sequential blind method was inferior to the traditional method,

which by the way, flies in the face of all the research that is out there, including also a field study that took place in Hennepin County in Minnesota.

But after the report came out, many social scientists came forward to voice their concerns with the findings because they didn't make sense and they didn't comport with anything else that any other scientist had seen up to this point.

And a blue ribbon panel was appointed to take a look at that study and it included a Nobel laureate. They said this study -- the methodology is so flawed we can't trust what it said. And basically, what they said was that there was a confound. And a confound in a scientific experiment is when you're basically comparing apples to oranges. So in this case they compared blind sequential to non blind simultaneous. And so it was totally unclear what was operating anywhere. You know, they couldn't tease it out. So basically what they found was that you couldn't trust the findings of this report.

But, you know, in other jurisdictions like Hennepin County where they also did field studies the improved best practices were found to be just as good and you know, the fears about losing correct identifications were found to be unfounded. And this is also supported just be endless studies some of which are included in your exhibit. We're always happy to provide you with tons of scientific support for all of these.

But I think that this bill really encapsulates the core recommendations and best practices that are out there.

Committee on Judiciary
Connecticut General Assembly
March 9, 2011

Testimony of David R. Cameron in Support of

Raised Bill No. 954, An Act Concerning the Electronic Recording of Custodial Interrogations
Raised Bill No. 6344, An Act Concerning Eyewitness Identification

The exonerations of James Tillman, Miguel Roman, and Kenneth Ireland, each of whom was convicted and incarcerated for many years for a crime he didn't commit, demonstrate that Connecticut is not immune from wrongful convictions. That fact was underscored in the past year by the decision of a habeas judge last April to throw out the convictions of George Gould and Ronald Taylor, each of whom was sentenced to 45 years in prison on the basis of a fabricated statement by a supposed eyewitness that, years later, was recanted in its entirety. It was underscored further by the revelations that came to light in the habeas trial of Richard Lapointe, who was convicted of murdering his wife's grandmother on the basis of a false confession extracted by police guile, pressure, and threats during the course of a nine-hour interrogation that wasn't recorded, although the Manchester police had recording equipment and, indeed, secretly recorded a long interview with his wife that same day.

These bills address two of the most frequently-occurring causes of wrongful convictions. The New York-based Innocence Project, which has played an important role in the exoneration by DNA of 266 individuals across the country since 1989, reports that the single most frequent cause of the wrongful convictions that were subsequently thrown out because of DNA evidence was eyewitness misidentification. Such misidentifications occurred in more than 75 percent of the wrongful convictions for which those convicted were later – much later, it should be noted – exonerated. That statistic alone should make the prevention of eyewitness misidentifications an exceptionally high priority for this Committee.

The Innocence Project has also reported that "false confessions," defined broadly to include incriminating statements, outright confessions, and even guilty pleas by individuals who didn't commit the crimes in question, occurred in 25 percent of the convictions in which DNA evidence eventually resulted in an exoneration. Like the previous one, this statistic should make the prevention of "false confessions" a high priority for this Committee.

If enacted into law, the two bills before you – Raised Bill No. 6344, An Act Concerning Eyewitness Identification, and Raised Bill No. 954, An Act Concerning the Electronic Recording of Custodial Interrogations – would go a very long way toward

utmost seriousness "cannot withstand even the most cursory examination." He concluded, "It is unacceptable, if not unconscionable, to continue to permit the police to choose when they will record an interrogation." He's right. I hope you will agree and will approve Raised Bill No. 954.

Raised Bill No. 6344, An Act Concerning Eyewitness Identification

As noted above, the Innocence Project reports that the single most frequently-occurring cause of wrongful convictions is misidentification by a victim or eyewitness. Indeed, eyewitness misidentifications occurred in more than 75 percent of the convictions overturned by DNA. The New York Task Force on Wrongful Convictions likewise found that eyewitness misidentifications occurred in 36 of the 53 – almost 70 percent – of the wrongful convictions it investigated.

Both organizations have argued that the best way to reduce the wrongful convictions that result from eyewitness misidentifications is by changing the procedure by which such identifications are obtained. Specifically, both organizations recommend:

1) double-blind administration of the identification procedure, meaning that neither the witness nor the person administering the procedure know who the suspect is;

2) that eyewitnesses be told that the administrator doesn't know the identity of the suspect and the suspect may not be present in the lineup or photo board;

3) that the fillers (those who are not the suspect) in the lineup or photo board match the description of the suspect.;

4) that the witness be asked immediately for a statement of confidence level; and

5) that the entire identification procedure be videotaped or otherwise electronically recorded.

Separately, the Innocence Project also recommends that the members of the lineup or the photographs be presented sequentially rather than simultaneously, although it recognizes that proposal is controversial and contested by some.

When I testified before you two years ago on a similar bill, I discussed in some detail the rationale for sequential rather than simultaneous presentation, the flaws in the design of a Chicago-area study (known as the Mecklenburg study) that is frequently cited by critics of sequential presentation, and the merits of a study conducted in Hennepin County, Minnesota (the greater Minneapolis area) that found that sequential presentation, accompanied by blind administration, substantially reduced the selection of "false positives" and dramatically increased the ratio of selection of suspects relative to selection of fillers. I have included a brief appendix that discusses those studies.

I will not repeat what I said last year and two years ago except to say that, in my opinion, the most important recommendations are those pertaining to double-blind administration, the instructions given eyewitnesses, the selection of fillers, the statement of confidence level, and the electronic recording of the entire procedure. If all of those recommendations were either mandated or formally recognized as "best practices," I believe the number of eyewitness misidentifications would be greatly reduced, regardless of whether the lineup or photos were presented sequentially or simultaneously.

While Raised Bill No. 6344 is in many respects an excellent bill from the point of view of preventing eyewitness misidentifications, I am concerned that it does not require that the entire identification procedure be videotaped or otherwise electronically recorded. The preparation of a written record alone would not prevent someone involved in the procedure from attempting to influence an eyewitness. Nor would it prove that no such attempt had occurred. A videotape or other electronic recording of the actual procedure would not only document any effort to influence a witness but would cause anyone who might otherwise be tempted to influence a witness to refrain from doing so. Given today's technology, there is absolutely no reason why eyewitness identifications – which have a long history of contributing to wrongful convictions – can't very easily and at minimal expense be electronically recorded.

Notwithstanding that caveat, I urge that you approve Raised Bill No. 6344.

Thank you.

David R. Cameron
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Appendix

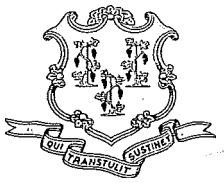
A Note on Simultaneous vs. Sequential Presentation in Eyewitness Identifications

The most controversial of the several possible improvements in the eyewitness identification procedure undoubtedly involves sequential rather than simultaneous presentation. Sequential presentation, it is argued, forces the eyewitness to make an absolute decision – yes or no – in response to each person or photo as the person or photo is shown while a simultaneous presentation is more likely to lead to a relative judgment in which the eyewitness chooses the person or photo closest to his/her memory of the perpetrator. Laboratory experiments have found that a sequential presentation results in far fewer "false positives," (i.e., identifications of fillers) than simultaneous presentation, although it may also increase the frequency of "false negatives" (i.e., failure to identify the person who committed the crime). However, the studies of scholars such as Dr. Gary Wells have found that the overall effect of double-blind administration and sequential presentation is, first and most importantly, a reduction in the number of "false positives" (i.e., persons who didn't commit the crime) and an increase in the ratio of accurate to mistaken identifications. (Wells, "Eyewitness Identification: Systemic Reforms," *Wisconsin Law Review*, 2006; also Stedley et al. in *Law and Human Behavior*, 2001.)

One frequently-cited study, conducted in Chicago, Evanston, and Joliet, Illinois and directed by Sheri Mecklenburg, the General Counsel of the Chicago Police Department (hence the frequent reference to the Mecklenburg report), found, contrary to experimental evidence, that sequential presentation resulted in a higher rate of "false positives – i.e., filler identifications (8 per cent vs. 3 per cent) – and a lower rate of suspect identifications than simultaneous presentation. (See *Report to the Legislature of the State of Illinois: The Illinois Pilot Program on Sequential Double Blind Identification Procedure*, 2006.)

Although often cited by opponents of sequential presentation, the design of the Mecklenburg study is deeply flawed. The precincts that used simultaneous presentation had, without exception, non-blind administration of the identification procedure whereas those which used sequential presentation had, again without exception, blind administration. The differences attributed to the sequential or simultaneous presentation could in fact have resulted from the differential impact of blind vs. non-blind administration. The abnormally low proportion of "false positives" – i.e., filler identifications (3 per cent vs. the normal 20-25 per cent in most academic experiments and field observations) – and much higher proportion of suspect identifications with non-blind administration suggest that in non-blind administration eyewitnesses may be systematically influenced in their selection, pointed away from fillers and toward suspects – exactly the problem blind administration is designed to redress. The confounding effect of blind vs. non-blind administration means that Mecklenburg's conclusions with respect to the relative impact of simultaneous and sequential presentation must be disregarded. (See Schacter et al. in *Law and Human Behavior*, 2008.)

A much better study, in terms of research design, is the one conducted in Hennepin County, Minnesota, the county that contains Minneapolis and the surrounding area. That study, initiated by Sen. Amy Klobuchar when she was Hennepin County Attorney, found that sequential presentation, accompanied by blind administration, reduced the reliance on relative judgments, substantially reduced the selection of fillers (i.e., "false positives"), substantially increased the proportion making no choice, and dramatically increased the ratio of selection of suspects relative to selection of fillers, thereby making the identification process much more reliable. (See Amy Klobuchar and Hilary Lindell Caligiuri, "Protecting the Innocent/Convicting the Guilty: Hennepin County's Pilot Project in Blind Sequential Eyewitness Identification," *William Mitchell Law Review*, 2005-6.)



STATE OF CONNECTICUT

OFFICE OF VICTIM ADVOCATE
505 HUDSON STREET, HARTFORD, CONNECTICUT 06106

Michelle S. Cruz, Esq.
State Victim Advocate

Testimony of Michelle Cruz, Esq., State Victim Advocate
Submitted to the Judiciary Committee
Wednesday, March 9, 2011

Good morning Senator Coleman, Representative Fox and distinguished members of the Judiciary Committee. For the record, my name is Michelle Cruz and I am the Victim Advocate for the State of Connecticut. Thank you for the opportunity to provide testimony concerning:

Raised Senate Bill No. 954, *An Act Concerning the Electronic Recording of Custodial Interrogations*
Raised Bill No. 6344, *An Act Concerning Eyewitness Identification*

The Office of the Victim Advocate (OVA) opposes Raised Senate Bill No. 954 as it proposes to bring forth more up-to-date interrogation practices, while simultaneously neglecting to address the financial climate of many of our police departments. As we learned in the investigation of the murder of Jennifer Magnano, some police departments lack sufficient funding to provide police dispatchers 24/7. Unless funds are appropriated for the implementation of electronic recording devices for all of the state and municipal law enforcement departments as well as providing appropriate equipment for the State's Attorneys and Assistant State's Attorneys to review this evidence, the proposed bill is simply another unfunded mandate. The end result of the proposed legislation is that it will place a financial burden on many cash strapped law enforcement departments. Departments who simply cannot afford the required recording equipment will then endure the added costs of sending officers from their department to provide testimony as to why the department did not record the interrogations, wasting precious funds to respond to motions to dismiss and/or suppress by the defense bar. The proposed legislation would likewise create more legal issues for defense attorneys to challenge the investigation of our state's law enforcement officers and delay the criminal proceedings yet again.

Rather than creating a law requiring law enforcement officers to electronically record all custodial statements for certain felony offenses, the OVA strongly recommends that state and local law enforcement departments create a committee to seek out federal and private grants for law enforcement officers throughout the state to receive additional education, training and equipment to enhance our state's custodial interrogations practices.

The OVA certainly understands the intent of Raised House Bill No. 6344, which is aimed at standardizing the eyewitness identification practice in all of the law enforcement departments in the state. The Committee should nonetheless consider that the proposed statutory "checklist" may have the unintended consequence of hampering the law enforcement community from responding to and investigating crimes in an

efficient and timely manner. First, it is common knowledge that in the majority of criminal cases, the offender is someone the victim knows, as opposed to a stranger. Hence in these cases, the "identification process" would be straight forward and the issues that have plagued many of the high profile false identification cases would not be relevant. Nonetheless, as a result of codified statutory eyewitness identification procedures, each and every case would become bogged down with "procedural" requirements, even if unnecessary. Photo arrays and live lineups are not necessary or relevant in a large percentage of the criminal investigations. Therefore, each and every "eyewitness" case would become a checklist, and for the sole purpose of safe guarding the officer's liability and the future prosecution of the criminal case. The police departments would be required to adopt and update scarcely used procedures. For example, in some of the smaller police departments where staffing is limited, it may be fiscally impossible to comply with paragraph (2) of the proposed bill which would require, when practicable, a law enforcement officer who is not aware of which person in the photo lineup or live lineup is suspected as the perpetrator, to conduct the identification procedure. The criminal prosecutions of these cases, if this legislation were to be adopted, would require law enforcement officers to commit copious amounts of times testifying in court as to the feasibility of complying with the requirements of paragraph (2) and the like.

Additionally, the framework of the proposed legislation stems from the 1999 United States Department of Justice, Office of Justice Programs, National Institute of Justice's "Eyewitness Identification Guide for Law Enforcement Officers". Although many of the practices suggested by the National Institute of Justice make good sense, the issue is that the foundation for this legislation is over twelve years. What happens when this guide is updated in the future? We will have codified guidelines that are out of date and have to enact new laws. The language of the guide forecasts that the guide is just that, a guide. As Janet Reno stated, "Although factors...vary among investigations, including the nature and quality of other evidence and whether a witness is also a victim of the crime, may call for different approaches or even preclude the use of certain procedures described in the Guide." With this in mind, I urge the Committee to reconsider codification of these proposed standards as they are merely a framework to guide officers in their investigations, rather than a hard fast set of rules. Law enforcement officers should be informed of the existence of these policies and yet officers must be free to focus on their investigations, applying practices and procedures from these policies that are applicable to their case.

Perhaps the better route would be for the state to seek grant funding in collaboration with the OVA to sponsor a one day training for witness identification procedures, including the best practices for each situation. The OVA could provide a training on the importance of creating a safe environment to take a crime victim's statement, including the reality that often times crime victims and witnesses for that matter, feel rushed or like they are bothering the police when they give their statement, which only serves to harm the integrity of the investigation and subsequent prosecution later on. In my previous life as a state prosecutor, I cannot tell you the numerous times during a trial when a victim would disclose a fact or facts that were not included in the victims' original statement. In the aftermath of the trial, I would inquire

of the victim what had occurred that caused their statement to be less detailed and inevitability, the victim would describe feeling rushed, scared, foolish, shamed or like they were bothering the officer when providing their statement. This is the cornerstone to changing the criminal justice process in the nation and in CT.

Therefore, the OVA urges the Committee to reject Raised Senate Bill No. 954 and Raised House Bill No. 6344. Thank you for consideration of my testimony.

Respectfully submitted,

Michelle S. Cruz

Michelle Cruz, Esq.
State Victim Advocate

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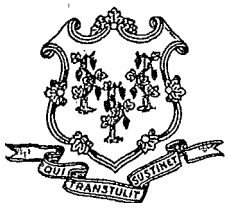
LINE 7

SENATOR MARTIN M. LOONEY
MAJORITY LEADER

Eleventh District
New Haven & Hamden



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March 9, 2011

Good afternoon Senator Coleman, Representative Fox and members of the Judiciary Committee. I am here to testify in support of S.B. 954 AN ACT CONCERNING THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS and H.B. 6344 AN ACT CONCERNING EYEWITNESS IDENTIFICATION.

I have long been an advocate for the taping of custodial interrogations, as I believe that this procedure protects both the police and the suspects in the interrogation process. S.B. 954, AN ACT CONCERNING THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS would move our state in this direction. While historically law enforcement officers have viewed taping of confessions with some trepidation, once they begin the process many of them become advocates for it. The Chief State's Attorney, Kevin Kane, has been helpful in increasing the use of taping custodial interrogations. If you would like more information on taping of confessions and the positive response from law enforcement I would be pleased to share with you a

report from the Northwestern University School of Law, "Police Experiences with Recording Custodial Interrogation." Taping of confessions would ensure greater accountability in our judicial system.

H.B. 6344, AN ACT CONCERNING EYEWITNESS IDENTIFICATION, would represent another improvement in the accuracy of our judicial system by addressing the notorious conundrum of eyewitness identification

Everyone involved with the criminal justice system is well aware that eyewitness identification can be a double edged sword. It is prone to stunning inaccuracy, but it is also perhaps the most compelling testimony in a courtroom. Therefore, we have an obligation to ensure that this testimony is as accurate as possible. H.B. 6344 would reduce the probability of error or of undue influence by law enforcement by, among other things, requiring that the line-up or photographs be shown in sequential order rather than simultaneously and that, when possible, the person conducting the identification procedure should not know who in the line-up or photographs is the suspected offender, and that the fillers in the line-up generally fit the description of the suspected offender. These proposals would increase confidence in the investigative techniques used by our criminal justice system. However, the best way to make the most positive changes regarding eyewitness identification require the support of the law enforcement community.

I have been working with former Connecticut State Supreme Court Justice David Borden and Chief State's Attorney Kevin Kane on a bill to create a task force to research current scientific knowledge as well as current practices. The task force would

create recommendations for law enforcement best practices. These recommendations could be the basis for legislation if they were not adopted voluntarily by the law enforcement community. This task force should create support within the law enforcement community for these procedural changes and that should lessen the resistance that these proposals have faced in the past. I look forward to working with you on this issue

CCDLA
"Ready in the Defense of Liberty"
Founded in 1988

Connecticut Criminal Defense Lawyers Association
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March 8, 2011

March 4, 2011

The Honorable Eric D. Coleman
The Honorable Gerald M. Fox.
Chairmen
Joint Committee on Judiciary
Room 2500, Legislative Office Building
Hartford, CT 06106

Re: Raised Bill No. 6344, An Act Concerning Eyewitness Identification

Dear Chairmen and Committee Members:

My name is Lisa J. Steele. For the past fifteen years, I have represented indigent criminal defendants in appeals to the Connecticut Supreme and Appellate Courts. I have been involved in eyewitness identification litigation since 1998 both as a party and as amicus counsel. I have written various articles about eyewitness identification issues and taught numerous CLE classes in several states. I am writing on behalf of the Connecticut Criminal Defense Lawyers Association.

The Connecticut Criminal Defense Lawyers Association (CCDLA) is a statewide organization of 350 lawyers dedicated to defending people accused of criminal offenses. Founded in 1988, CCDLA works to improve the criminal justice system by insuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally, and that those rights are not diminished.

CCDLA strongly supports and recommends the passage of Raised Bill No. 6344, *An Act Concerning Eyewitness Identification*. A requirement that law enforcement adopt procedures already in use in states like Massachusetts, New Jersey, North Carolina, in some law enforcement agencies like Dallas and Austin, Texas, and pending in Rhode Island, will decrease the likelihood that an identification procedure will result in a wrongful arrest and conviction. See New Jersey Attorney General, Attorney General Guidelines for Preparing and Conducting Photo and Live Lineup Identification Procedures (Apr. 18, 2001); Fisher, *Eyewitness Identification Reform in Massachusetts*, 91:2 MASS. L. REV. 52 (2008). When the wrong defendant is prosecuted, not only is this a tragedy for the innocent person, but the true culprit remains at large to perpetrate more crimes in the community.

In Massachusetts, reforms similar to those proposed here are credited with improving conviction rates. See Murphy, *DA Brings in Wins in Homicide Cases: Conley Credits New Procedures*, BOSTON GLOBE, Apr. 12, 2009, at B1. See also Gaertner & Harrington, *Successful Eyewitness*

Identification Reform: Ramsey County's Blind Sequential Lineup Protocol, POLICE CHIEF, Apr. 2009, at 26 (experience of Minnesota department with blind, sequential ID procedures).

In addition, the reforms are likely to save money in the long run, by reducing the need for motions to suppress identifications and for defense experts to testify about the potential flaws in the traditional procedures in hearings and at trial. This will likely save time and money for the court system, prosecutors, public defenders, and police departments. The cost of implementing this proposal can be quite small. The benefits are enormous.

1. Mistaken Identification Remains the Leading Factor in Wrongful Convictions.

In *State v. Ledbetter*, 275 Conn. 534 (2005) , our Supreme Court recognized "the inherent risks of relying on eyewitness identification" and noted concerns raised by the United States Supreme Court in 1967. The Innocence Project notes that eyewitness identification mistakes were found in 75% of the 255 exoneration cases including Calvin Tillman's case here in Connecticut. Unfortunately, DNA is found in a minority of cases. Larry Miller served over ten years in jail before the true culprit came forward in 1997 providing details that convinced the habeas court that he was innocent. See *Miller v. Commissioner of Correction*, 242 Conn. 745 (1997). The DNA exonerations are the canary warning us that there is a large problem that is likely to remain unresolved unless reforms are made.

Chief State's Attorney Kane, testifying before this Committee on March 10, 2010, said that "We don't take eye witness identifications lightly. We're all highly concerned about it." The problem before this Committee is to translate that concern into action. The Chief State's Attorney and the Connecticut Police Chiefs Association have been studying this issue for the past 12 years. It is time to move forward.

As the *Ledbetter* court also recognized that "eyewitness identification remains a vital element in the investigation and adjudication of criminal acts". It is because of this vitality that proper procedures are critical to a proper police investigation focused on the true culprit and not delayed by building a case against an innocent person.

2. Traditional Eyewitness Identification Procedures: The Science and the Problem.

One of the best introductions to eyewitness identification science and the law can be found a report by a New Jersey judge assigned to prepare a report in this area. Justice Palmer, writing separately in *State v. Outing* refers several times to G. Gaulkin, Report of the Special Master, *State v. Henderson*, New Jersey Supreme Court, Docket No. A-8-08 (June 10, 2010), available at http://www. judiciary.state.nj.us/pressrel/ HENDERSON% 20FINAL% 20BRIEF% 20.PDF% 20(00621142).PDF

Judge Gaulkin reviewed the research in this area and concluded that "Of all the substantive uses social science in law . . . nowhere is there a larger body of research than in the area of eyewitness identification." Special Master's Report at 9. There are thousands of published, peer-reviewed papers in major psychology journals discussing

eyewitness identification. These papers come to a general consensus on key issues, including those raised in this Bill.

Not only is there is ample solid science in the eyewitness identification field to support this legislation, similar principles are found in the traffic safety and accident reconstruction field and in Dewar & Olson, HUMAN FACTORS IN TRAFFIC SAFETY (2d Ed. 2007); Olson & Faber, FORENSIC ASPECTS OF DRIVER PERCEPTION AND RESPONSE (2003); Shinar, TRAFFIC SAFETY AND HUMAN BEHAVIOUR (2007), but also in research and training on use-of-force by police officers and reconstruction of officer-involved shooting incidents. See Dept. of Justice, VIOLENT ENCOUNTERS: FELONIOUS ASSAULTS ON AMERICA'S LAW ENFORCEMENT OFFICERS, 61-73 (2007). This bill is supported by good, solid science.

To the extent that opponents of this bill disagree or argue that the science is not yet definitive, CCDLA suggests this Committee ask the opponents to provide specific citations to the materials which they feel support their skepticism. The eyewitness identification research which underlies this Bill has been found persuasive by the Department of Justice, various state task forces, numerous police departments and law enforcement agencies, and many courts including Connecticut appellate courts. To dismiss the research in this area as merely academic studies of undergraduate students does a disservice to Connecticut's residents.

The undersigned would note that last spring, she co-taught a program for Massachusetts attorneys on eyewitness identification along with, among others, two Boston-area prosecutors and a Deputy Chief of Police from a Boston suburb. The prosecutors gave a presentation supporting procedures very similar to those in this bill which are in use in Massachusetts. The Deputy Chief of Police talked about how the reforms had been implemented by his department. Written materials can be found at MCLE, *Identification Issues in Criminal Cases* (2010) at www.mcle.org. The reforms proposed here are working in Massachusetts – they can work in Connecticut.

Opponents of this bill may suggest that legislation is not needed – law enforcement can adopt procedures on its own. First, CCDLA notes that the Department of Justice first recommended many of the procedures contained in this bill in 1999. The State's Attorneys and police departments have had twelve years to study and implement reforms and have largely not done so. The procedures adopted seven years ago in response to *State v. Ledbetter* are a good start, but they do not address many of the reforms in this Bill. Second, to the extent that some departments have voluntary adopted some reforms, their adoption has been inconsistent and haphazard. Fisher, *Eyewitness Identification Reform in Massachusetts*, 91:2 MASS. L. REV. 52, 65 (2008). The reliability of a vital investigative procedure should not depend on where a crime occurs – uniform procedures incorporating well-settled science will best serve Connecticut's citizens. It is time for legislation.

A. General Recommendations.

In 1999, the Department of Justice published EYEWITNESS IDENTIFICATION: A GUIDE FOR LAW ENFORCEMENT based upon the recommendations of a task force of prosecutors, defense attorneys, police officers, and researchers. The Guide recommended many of the procedures in subsections (3)(A) and (3)(B), (4), (5), (6), (7), (8), (10), (12), (13) and (14) – indeed, the bill's language is virtually identical to the

Department of Justice's advice given twelve years ago. These portions of this bill are well supported by research. There is no dispute among researchers about these general provisions. They have been adopted by numerous law enforcement agencies across the country and should be adopted without hesitation in Connecticut.

B. Double-Blind Procedures

A test is "blind" when the test subject does not know the expected answer. A test is "double-blind" when neither the person taking the test nor the person giving the test know the expected answer. Double-blind procedures are standard and uncontroversial in many areas of science. A double-blind identification procedure would mean that the police officer administering the line-up or photo array would not know which image is the suspect. He or she could not inadvertently give a verbal or nonverbal cue to the witness about who he or she ought to pick.

This is not a difficult or expensive process. As Chief State's Attorney Kane noted in his written testimony in 2010, identification procedures in Connecticut "virtually always" involve the use of photographs. A "live" lineup is an extreme rarity in Connecticut. For photo arrays, a police officer could place the photographs of the suspect and filler in manila envelopes and hand them to the witness to view, telling the witness not to let the officer see which photographs he or she is looking at and then to initial the one he or she picks. The "folder method" was first suggested in 1999, and has been successfully used by several departments. See Klobuchar, et als, *Improving Eyewitness Identifications: Hennepin County's Blind Sequential Lineup Pilot Project*, 4 CARDOZO PUB. L. POL'Y & ETHICS J. 381, 409, 411 (2006); RHODE ISLAND EYEWITNESS IDENTIFICATION TASK FORCE REPORT (2010) at 8, n. 14. It is not expensive and requires nothing more than standard office supplies.

The Department of Justice Task Force considered, but did not recommend double-blind identification procedures in 1999. See Judges, *Two Cheers for the Department of Justice's Eyewitness Evidence: A Guide for Law Enforcement*, 53 ARK. L. REV. 231 (2000). In the intervening 12 years, additional research clearly supports the use of double-blind procedures where feasible.

The State seems to agree. The Chief State's Attorney's Law Enforcement Council sought the benefits of double-blind procedures without openly recommending them: "Avoid using words, gestures, or expressions which could influence the witness' selection. If practical, especially during a photo array, take a position where the witness cannot see you. If the witness makes an ID, refrain from making any comment on the witness' selection." Letter from Chief State's Att'y Morano to Comm'r Boyle, Connecticut State Police (Sept. 23, 2005) (reproduced in Attorney Kane's written testimony in 2010). Last year, Chief State's Attorney Kane expressed his support for the use of double-blind procedures in testimony before this Committee on March 10, 2010.

The Supreme Court in *State v. Marquez*, 291 Conn. 122 (2009), *State v. Outing*, 298 Conn. 34 (2010) and the Appellate Court in *State v. Nunez*, 93 Conn. App. 818 (2006) have reviewed numerous scientific articles and seem to agree that double-blind procedures are less suggestive than the traditional procedure. If this Committee reviews the briefs in those three cases, it will not find any scientific article cited by the State criticizing double-blind procedures. However, the Courts have declined to find that

double-blind procedures are constitutionally required, leaving this issue to you, the Legislature.

There is no dispute among researchers about the efficacy of double-blind identification procedures as described in subparagraph (1) of this bill. Double-blind procedures have been adopted by numerous law enforcement agencies across the country and should be adopted without hesitation in Connecticut.

C. Sequential Procedures

In a traditional identification procedure, the witness is show all of the photographs or all of the live persons in a line-up at the same time. The witness can then compare the images or people to find the one what looks "most like" the culprit in a process called "relative judgement". See e.g. *State v. Ledbetter*, 275 Conn. 534 (2005). If the actual culprit is present, he or she obviously looks most like himself. However, if the culprit is not present, witnesses tend to pick the person who looks most like their memory by process of elimination rather than pick no one. The Department of Justice Task Force considered, but did not recommend sequential identification procedures in 1999. See Judges, *Two Cheers for the Department of Justice's Eyewitness Evidence: A Guide for Law Enforcement*, 53 ARK. L. REV. 231 (2000). In the intervening 12 years, additional research supports the use of sequential procedures where feasible.

To reduce this problem, in a sequential procedure, the witness is shown one image or person at a time and asked to make an absolute yes/no decision. As described in subsection (2) and (3)(C) to (F) a witness would see all of the fillers and the suspect, in a random order. If the witness made a choice early, he or she would still see the remaining images.

Opponents of this bill may direct this Court to the Supreme Court's debate about sequential procedures in *State v. Marquez*, 291 Conn. 122 (2009) and question the research supporting sequential procedures. The *Marquez* opinions refer to a 2006 study in Chicago (the Mecklenburg study) which tried to test the traditional procedures against double-blind sequential procedures. See Mecklenburg, *Report to the Legislature of the State of Illinois: The Illinois Pilot Program on Sequential Double-Blind Identification Procedures* (2006); Meckleburg, *Addendum to the Report to the Legislature of the State of Illinois: The Illinois Pilot Program on Sequential Double-Blind Identification Procedures* (2006).

The Mecklenburg study has never been published in a peer-reviewed scientific journal. Critics have published several articles raising concerns about its design and procedures. Even on its face, its results are startling. In two counties (Chicago and Evanston) no witness using the traditional method picked a filler instead of the police suspect --- not a single witness in 152 procedures in Chicago and an unknown number in Evanston. This suggests that there is a serious problem with the traditional method used in Illinois – no witness, no matter how bad the viewing circumstances, ever chose the wrong answer. Other simultaneous procedure studies across the country showed an average of 20.5% filler selection rate – about 1 in 5 actual witnesses choose the wrong person, perhaps due to stress, or bad viewing conditions, or the actual culprit not being in the array.

Numerous articles have been published criticizing the study's methods and results. Wells, *Field Experiments on Eyewitness Identification: Towards a Better Understanding of Pitfalls and Prospects*, 32 LAW & HUM. BEHAV. 6, 7 (2008); State of Wisconsin Office of the Attorney General, RESPONSE TO CHICAGO REPORT ON EYEWITNESS IDENTIFICATION PROCEDURES 4 (2006); Schacter et al., *Policy Forum: Studying Eyewitness Investigations in the Field*, 32 LAW & HUM. BEHAV. 3, 4 (2008); Ross & Malpass, *Moving Forward: Response to "Studying Eyewitness Investigations in the Field*, 32 LAW & HUM. BEHAV. 16, 19 (2008); Steblay, *What we Know Now: The Evanston Illinois Field Lineups*, 35 LAW & HUM. BEHAV. 1 (2011); VERMONT EYEWITNESS IDENTIFICATION AND CUSTODIAL INTERROGATION STUDY COMMITTEE REPORT 8 (2007).

The disputed Mecklenburg study does not undermine research supporting the efficacy of sequential procedures. Sequential procedures have been adopted by numerous law enforcement agencies across the country and should be adopted in Connecticut.

If, despite this testimony, the Committee remains troubled by the use of sequential procedures, CCDLA strongly recommends adopting the remainder of the general provisions and double-blind procedures in this bill and directing further study of sequential procedures as adopted in numerous other states. See RHODE ISLAND EYEWITNESS IDENTIFICATION TASK FORCE REPORT 15-16 (2010) (strongly urging police departments to adopt sequential procedures). Research would support adopting a double-blind simultaneous procedure, which has been done in Ohio, see Ohio Code § 2933.83 (Minimum requirements for live lineup or photo lineup procedures), but it would not support adopting a non-blind sequential procedure.

D. Familiarity does not Protect from Mis-Identifications

In his testimony to this Committee last year, on March 10, 2010 Chief State's Attorney Kane remarked that "Most of the eye witness identifications we get that, at least, we're comfortable with are really cases in which the witness or the victim have known the defendant, have had prior contact with the defendant and they've had sufficient contact and can pick the person out." This might suggest to the Committee that the existing eyewitness identification procedures are sufficient in the majority of cases and that this Bill is unneeded.

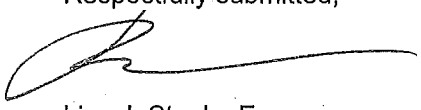
There are two problem with this reassurance. First, familiarity is complicated – there is a vast difference between an identification made by a close family member and one made by a near-stranger or casual acquaintance. Second, familiarity is merely a positive factor in making an identification. It does not mean that the negative factors like distance, lighting, stress, or unnecessarily suggestive procedures can be ignored. Kerstholt, et al., *The Effect of Availability on the Identification of Known and Unknown Persons*, 6 APPL. COG. PSYCH. 173, 179-80 (1993) (study of 30 co-workers, test subjects misidentified 22% of strangers photographs taken under bad viewing conditions as colleagues). Pezdek & Stolzenberg, Non-Stranger Identification: How Accurately Do Eyewitnesses Determine if a Person is Familiar? Paper presented at the meeting of the American Psychology - Law Society, Vancouver, Canada. (March 2010) (study of high school students, 28% misidentified class photographs of strangers as familiar person). The authors of the 2010 study concluded "surprisingly that recognition accuracy for casually familiar non-strangers is not reliably higher than that for strangers."

The proposed reforms to eyewitness identification procedures are important to all identifications made in Connecticut.

3. Conclusion.

Numerous states and law enforcement agencies have adopted the reforms set forth in this bill. The reforms are supported by solid empirical science. They are necessary to protect the innocent from being wrongfully arrested and prosecuted. On behalf of CCDLA, I urge you to pass Raised Bill #6344.

Respectfully submitted,



Lisa J. Steele, Esq.

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE COMMISSIONER

Colonel Danny R. Stebbins
Acting Commissioner

Lieutenant Edwin S. Henlon
Chief of Staff

March 9, 2011

Rep. Gerald M. Fox, Co-Chairman
Sen. Eric D. Coleman, Co-Chairman
Judiciary Committee
Legislative Office Building
Hartford, CT 06106

HB 6344 AN ACT CONCERNING EYEWITNESS IDENTIFICATION

The Department of Public Safety comments on bill.

Many of the statutory changes proposed by this bill have already been put in place by the Department of Public Safety in response to the Connecticut Supreme Court's September 19, 2005, decision in State v. Ledbetter, 275 Conn. 534. Included among these changes is that the officer conducting the eyewitness identification now gives, as standard procedure, a warning that the perpetrator may or may not be present.

There are two changes in this bill that are not part of the agency's current procedure. The first change would require having a lineup administrator who does not know the identity of the suspect. The lead case officer would still put the lineup together in accordance with department policy. Within our Major Crime Unit the majority if not all detectives are well aware of major case investigations. This change would involve bringing an unfamiliar trooper in to present and document the outcome of the lineup. This would divert agency resources from other needed areas and would appear unnecessary in view of the fact that the officer administrating the lineup is directed to avoid words, gestures or expressions that could influence the witness' selection. If possible, especially during a photo array, the officer takes a position where the witness cannot see him.

The second possible change involves how the lineup will be presented to the eyewitness. The bill would require that persons in the lineup be presented sequentially, not simultaneously, except if the lineup administrator knows which person in the lineup is suspected as the perpetrator, the lineup would be presented simultaneously. Currently the agency uses eight (8) window photo boards and shows the lineup simultaneously.

Sincerely,

Col. Danny R. Stebbins

Colonel Danny R. Stebbins
ACTING COMMISSIONER

TESTIMONY

of the

CONNECTICUT CONFERENCE OF MUNICIPALITIES

to the

JUDICIARY COMMITTEE

March 9, 2011

CCM is Connecticut's statewide association of towns and cities and the voice of local government - your partners in governing Connecticut. Our members represent over 90% of Connecticut's population.

We appreciate this opportunity to provide testimony to you on issues of concern to towns and cities.

H.B. 6344, "An Act Concerning Eyewitness Identification"

H.B. 6344 may have fiscal implications for smaller communities. CCM urges the Committee to obtain a fiscal note on this bill prior to taking any action on it.

Further, CCM understands that the research on sequential line-ups vs. simultaneous is inconclusive.

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If you have any questions, please contact Ron Thomas at rthomas@ccm-ct.org or (203) 498-3000.

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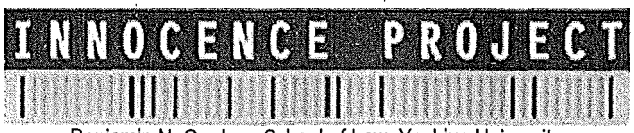

Benjamin N. Cardozo School of Law, Yeshiva University

TESTIMONY OF REBECCA BROWN,

SR. POLICY ADVOCATE FOR STATE AFFAIRS, INNOCENCE PROJECT,

BEFORE THE CONNECTICUT JUDICIARY COMMITTEE

Re: HB No. 6344 (Raised) – An Act Concerning Eyewitness Identification
SB No. 945 (Raised) – An Act Concerning Recording of Custodial Interrogations

SB 954

On behalf of the Innocence Project, thank you for allowing me to testify today before the Connecticut Judiciary Committee.

Since its U.S. introduction, post-conviction DNA testing has proven the innocence of 266 people who had been wrongly convicted of serious crimes. With the certainty of innocence that DNA provides, we can also be certain that something(s) went wrong in the process which led fact finders to believe beyond a reasonable doubt that the innocent person was, in fact, guilty of the crime.

The Innocence Project was founded in 1992 at the Benjamin N. Cardozo School of Law to exonerate the innocent through post-conviction DNA testing. We regard each DNA exoneration as an opportunity to review what causes wrongful convictions, and identify factually-supported methods to minimize the possibility that such errors will continue to create wrongful convictions. The recommendations that we make are grounded in robust social science findings and practitioner experience, all aimed at improving the reliability of the criminal justice system.

Eyewitness Identification Reform

At least one mistaken eyewitness identification contributed to the wrongful conviction in a full 75% of cases of wrongful conviction proven through DNA testing. But it is not just the wrongfully convicted who suffer when an eyewitness misidentifies an innocent person as the perpetrator of a crime. When an

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eyewitness misidentifies someone, police are also led away from the real perpetrator, and instead focus their investigation on an innocent person. What's more, if the police do again focus their case on the real perpetrator, the eyewitness who had previously identified an innocent person is "burned," and thus not of use in the criminal prosecution. Simply put, nobody – not the police, prosecutors, judge, jury, or indeed, the public at large – benefits from a misidentification. The only person who benefits is the real perpetrator of a crime.

The good news is that over the past 25 years, a large body of peer-reviewed research and practice has been developed, showing us how simple reforms to the eyewitness identification process can greatly reduce the inadvertent misleading influences present in traditional eyewitness identification procedures.

Lineup Protocols Should be Grounded in Best Practices & Social Science Research

From DNA exonerations we've learned that the traditional lineup procedures provide many opportunities to inadvertently cause a witness to misidentify an innocent person as the perpetrator of crime. Traditional eyewitness identification methods also often reinforce a witness's wrong choice, resulting in even stronger witness confidence in an identification that was incorrect. **Social science research over the past three decades has consistently confirmed the fallibility of eyewitness identifications as well as the unwitting contamination of witness recall through many standard eyewitness identification procedures. This same research has also identified simple changes in eyewitness identification procedures that can greatly reduce the possibility of misidentification.**

Responding to the proliferation of research in this area, police and prosecutors from across the country have begun to rethink traditional eyewitness identification procedures and promulgated updated policies for use by their law enforcement officials. Attorneys General in New Jersey and Wisconsin have gone so far as to promulgate best practices for use in their respective states. In April 2001, New Jersey became

the first state in the nation to officially adopt best practices related to eyewitness identification protocols when the Attorney General issued Guidelines for Preparing and Conducting Photo and Live Lineup Identification Procedures, mandating the requirement that lineups be administered by blind administrators – by all law enforcement agencies statewide. In Minnesota in October of 2009, the Ramsey County Attorney's Office, the Minnesota Bureau of Criminal Apprehension and the Minnesota County Attorneys Office sponsored statewide training on the "blind sequential lineup" for the entire law enforcement community in that state in these best practices.

Just two months ago, a nine-member task force in Rhode Island, which included membership from all corners of the criminal justice community, called for every law-enforcement agency in the state to establish a written policy for conducting eyewitness identifications consistent with the report's recommended best practices and that all law-enforcement officers be trained in these "best practices" by June of this year. The best practices recommended by the Rhode Island task force include blind administration of live and photo lineups, proper filler selection, the issuance of specific instructions, and that a confidence statement be taken immediately upon identification. According to Task Force Co-Chair Deputy Attorney Gerald Coyne, "We all have an interest in making sure the right person is convicted."[1]

Reforms Embraced by Other Jurisdictions

These changes have proven to be successful across the country. The states of New Jersey, North Carolina, Ohio, large cities such as Minneapolis, MN, Winston-Salem NC, and Boston, MA (to name just a few) and small towns such as Northampton, MA have implemented these practices and have found that they have improved their quality of their eyewitness identifications, thus strengthening prosecutions and reducing the likelihood of convicting the innocent.

[1] Mulvaney, Katie. "R.I. General Assembly to take up report on guidelines for eyewitness evidence." Providence Journal, January 26, 2011.

Across the country, jurisdictions that have implemented these reforms at first experienced resistance, but after police were provided the opportunity to learn more about them, receive training about how to properly implement them, and to participate in the formation of the specific adaptations of the reforms in their jurisdictions, there is widespread agreement that these improved eyewitness identification procedures increase the accuracy of their criminal investigations, and the effectiveness of their criminal prosecutions.

Legislation requiring the uniform implementation of best practices has been considered by this committee for several years, but has not spurred its voluntary implementation by law enforcement. Simply put, Connecticut can wait no longer, and this legislation represents a reasonable way for the state to uniformly advance in this critically important area of wrongful conviction reform.

False "confessions" are far more prevalent than one might think.

A false confession, admission, or dream statement was found to have contributed to nearly 25% of the wrongful convictions in America's 266 DNA exonerations. Electronically recording custodial interrogations from Miranda onward removes serious questions about the "confession" in question, by enabling the finder of fact to consider the most accurate presentation of the confession evidence at trial, thus narrowing the possibility of a wrongful conviction.

Ancillary Benefits of Recording Interrogations

There are a number of ancillary benefits that can be achieved through the implementation of mandatory recording. A record of the interrogation can resolve disputes about the conduct of law enforcement officers—allegations of police misconduct can be disproven. Investigators will not have to focus upon writing up a meticulous account of the statements provided by the suspect, and may instead focus his

attention on small details, such as subtle changes in the narrative, which he might have otherwise missed. Having a record of good interrogation techniques can be a useful training device for police departments, particularly as cases with distinctive characteristics come to light. Overburdened courts will welcome a huge reduction in defense motions to suppress unrecorded statements and confessions as well as pretrial and trial hearings focused upon establishing what transpired during the course of an interrogation.

The single best reform available to hinder the occurrence of false confessions, the mandatory electronic recording of interrogations, is being embraced by police departments around the country, now estimated at 750 law enforcement agencies. The states of Alaska, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Wisconsin, and the District of Columbia already require it in serious cases, and the same is done in large metropolitan cities such as Phoenix, AZ; Los Angeles, San Diego, San Francisco and San Jose, CA; Denver, CO; Austin and Houston, TX. As of this writing, we understand that a pilot project is underway in Connecticut and that the preliminary feedback from law enforcement speaks to the benefits previously articulated in this testimony. What is required, however, is statewide, uniform implementation of this critical reform, whose innumerable benefits will undeniably bolster the investigations of criminal cases.

In the summer of 2004, Thomas P. Sullivan, the former U.S. Attorney for the Northern District of Illinois, published a report detailing police experiences with the recording of custodial interrogations. **Researchers interviewed officers in 238 law enforcement agencies which have implemented the reform in 38 states and concluded, "virtually every officer with whom we spoke, having given custodial recordings a try, was enthusiastically in favor of the practice."** (Sullivan, Thomas, "Police

Experiences with Recording Custodial Interrogations." Report presented by Northwestern University School of Law's Center on Wrongful Convictions, p. 6.)

SB 945 carves out broad exceptions to recording interrogations that seek to protect law enforcement, while also ensuring that the best possible evidence is available to fact finders during the course of criminal proceedings. Passage of SB 945 will assure protections to the innocent, which in turn will allow law enforcement to focus its attention on the apprehension of the true culprit. Less than ideal interrogation procedures have contributed to or been the main factor in nearly one in five of the nation's wrongful convictions of individuals later exonerated through DNA evidence. In each of these cases, the true perpetrator remained at large, able to commit additional crimes.

By uniformly recording interrogations in serious cases, false confessions can be more readily identified, police will be relieved of needless (and some would say endless) questioning from defense lawyers about what transpired during the interrogation, and perhaps most importantly judges and juries will have the best evidence of what was and was not said during an interrogation.

We hope the Committee will agree that taking advantage of the emerging research and best practices will further enhance the ability to swiftly and surely convict offenders, and avoid being misled into pursuing others, or worse, convicting the innocent. Passage of both HB 6344 and SB 945 will assure protections to the innocent, which in turn will allow law enforcement to focus its attention on the detection of the true culprit.

002176

INNOCENCE PROJECT

EXHIBIT

SOCIAL SCIENCE RESEARCH SUPPORTING EYEWITNESS IDENTIFICATION REFORM

SUBMITTED TO THE CONNECTICUT JUDICIARY COMMITTEE

REBECCA BROWN,
SR. POLICY ADVOCATE FOR STATE AFFAIRS
INNOCENCE PROJECT

002177

Blind Administration of Lineups

Blind testing means that the person administering the test does not know the "correct" or "desired" answer.

In tests of new drugs, for instance, the medical person who examines subjects does not know whether the subject received the experimental drug or a placebo.

Blind testing simply applies a fundamental scientific principle to the criminal setting.

Why is blind administration necessary?

The call for blind testing does not call into question the integrity of law enforcement.

People generally do not know when they are unintentionally influencing others.

Purpose of blind administration: to prevent inadvertent cueing of the eyewitness.

What Blind Administration Can Prevent

Verbal influences on identification decision:

- e.g. suspect is in position #3
  Witness: "um..number two.."
  Detective: "Now, be sure you look at everyone"
- e.g. if suspect is in position #3
  Witness: says "um..number three.."
  Detective: "Tell me about number three"
- e.g. if the suspect is in position #3
  Witness: says nothing..
  Detective: "I noticed you paused on number three"

Nonverbal influences on identification:

- Pauses, leaning, displays of interest/disinterest

Blind Administration is Scientifically Supported

"The need for double-blind testing procedures is one of the best known, best respected, and best documented findings in all of scientific psychology and is a staple in science." – Gary Wells, prominent social scientist

Robert Rosenthal – **meta-analysis** of 345 studies concluded that the effect of the testers' expectations is robust and, based on the scientific data, there is less than one chance in a million that there is no relation between a testers expectations and the behavior of the person tested. [Rosenthal & Rubin, 1978, *Behavioral and Brain Sciences*]

More Scientific Support for Blind Administration

Phillips et al. (1999) ***J. Applied Psychology***
erroneous belief of the lineup administrators led eyewitnesses to be more likely to choose that person (in sequential lineups)

Haw and Fisher (2004) ***J. Applied Psychology***
Close contact led to an increase (from a mere 3% to 30%) in choosing the person that the lineup administrator was led to erroneously think was the correct person. (in simultaneous lineups)

Douglas, Smith, & Frafer (2005) ***Law and Human Behavior***
All lineup administrators were blind, but the identification behavior of the first eyewitness (an individual who picked an innocent person) led the second eyewitness to misidentify the same person.

Garrioch and Brimabombe (2001) ***Law and Human Behavior***
Lineup administrators' erroneous beliefs regarding which lineup member was the suspect influenced the eyewitnesses confidence in their choice.

Greathouse and Kovera (2009) ***Law and Human Behavior***
Lineup administrators' beliefs regarding which lineup member was the suspect influenced witnesses to choose that person, especially when other factors present that led to propensities to choose.

Clark, Marshall, & Rosenthal (2009) ***Journal of Experimental Psychology: Applied***
Subtle influences from administrator affected witnesses and witnesses showed little or no awareness that they were influenced.

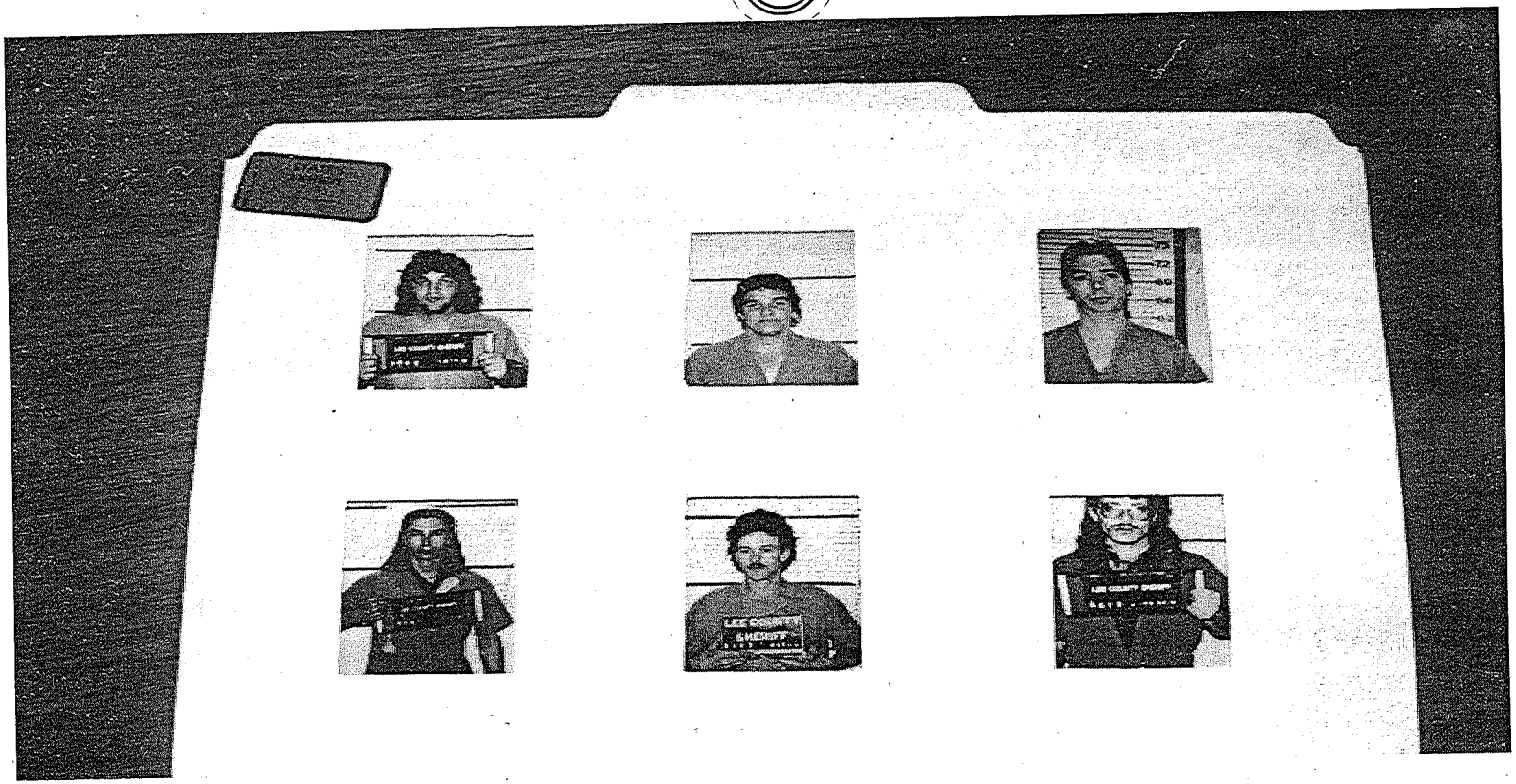
Line-up Composition: Proper Selection of Fillers

Fillers need to be selected carefully so that the person of interest does not stand out (e.g., as being the only one who fits the description).

Mock witness test:

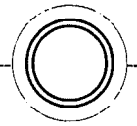
Given the description that the witness gave of the perpetrator, would mock witnesses (who have never seen the perpetrator) be able to pick him out of the lineup?

Proper Composition of Lineup



The witness described the perpetrator as white male, about 6'2", dark hair just over the ears, clean shaven

Instructing the Eyewitness



"Instructions" are a series of statements issued by the identification procedure administrator to the eyewitness that deter the eyewitness from feeling compelled to make a selection, seek clues from the administrator about whom to (not) pick, or whether or not a selection was correct, and otherwise help minimize the likelihood of a misidentification.

Instructing the Witness

In identification procedures where the perpetrator is absent (and therefore any identification would be incorrect), the type of instructions provided – "biased" or "unbiased" - have a significant effect on eyewitness's accuracy.

- When "unbiased" instructions are given, the number of (incorrect) identifications decrease.
- When "biased" instructions were given, the number of (incorrect) identifications increase.

Instructing the Witness: Scientific Support

When the perpetrator is absent, and thus when the innocent suspect is more vulnerable, unbiased instructions lead to fewer false identifications, whereas biased instructions lead to an increased rate of false identifications.

Source: Malpass, R. S. & Devine, P. G. (1981) Eyewitness identification: Lineup instructions and the absence of the offender. *Journal of Applied Psychology, 66,* 482-489.

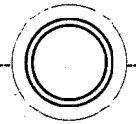
Instructing the Witness: Scientific Support

These findings are supported by a **meta-analysis** of results from twenty-two individual studies (with **2,588 participant witnesses**) on the effects of instructions, which found that when biased instructions were provided to witnesses, a higher level of choosing occurred.

When unbiased instructions were provided to witnesses, correct identifications (including correct rejections of lineup members when the suspect was absent) occurred fifty-six percent of the time. On the other hand, when biased instructions were provided, correct identifications fell to forty-four percent.

Source: Steblay, N. M.. (1997) Social influence in eyewitness recall: A meta-analytic review of lineup instruction effects. Law and Human Behavior, 21, 283-298.

Recommended Instructions



Issued by National Institute of Justice Technical Working Group on Eyewitness Identification:

1. Instruct each eyewitness without other persons present.
2. Describe the photo array to the eyewitness only as a "collection of photographs."
3. Instruct the eyewitness that **the person who committed the crime may or may not be present** in the identification procedure.
4. Consider suggesting to the eyewitness to think back to the event and his/her frame of mind at the time.
5. Instruct the eyewitness to select a photo array or live lineup member if he/she can and to state how he/she knows the person if he/she can.
6. Assure the eyewitness that **regardless of whether he/she makes an identification, the police will continue to investigate the case**.
7. Instruct the eyewitness that the procedure requires the investigator to ask the eyewitness to state, **in his/her own words, how certain he/she is of any identification**.

The Value of Confidence Statements

Studies consistently show that people (i.e. jurors) consider an eyewitness's confidence level the primary factor in determining the accuracy of his identification.

False Certainty Can Be Created
(And Can Never Be Undone)

Eyewitnesses can be influenced even after they have made a choice from the lineup.

**** This is known as 'confirming feedback'****

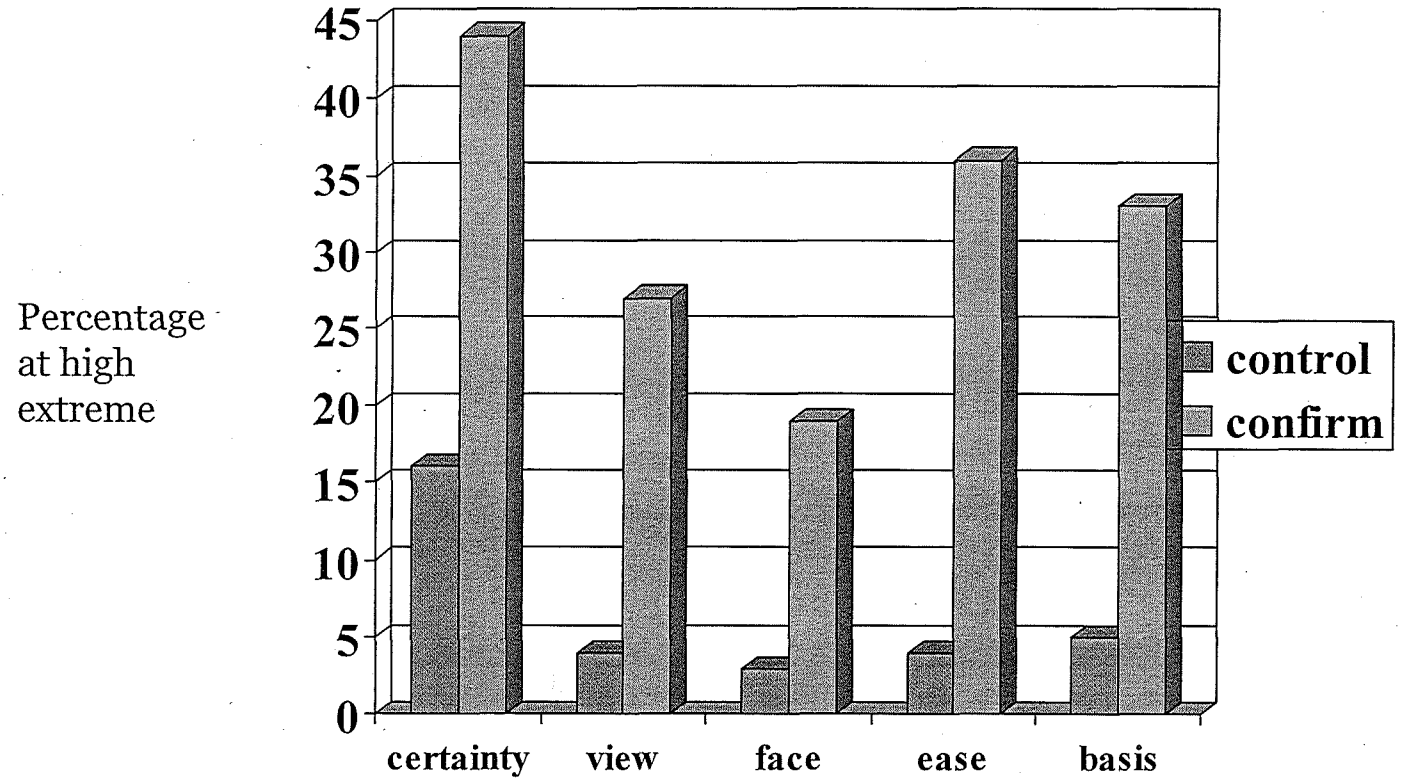
Wells, G.L., & Bradfield, A.L. (1998). "'Good, You Identified the Suspect': Feedback to Eyewitnesses Distorts Their Reports of the Witnessing Experience," Journal of Applied Psychology, 83, 360-376.

After identification, participants were asked:

CONTROL GROUP: Received no feedback
COMPARISON GROUP: Received confirming feedback

- **How certain were you at the time your identification that you identified the real gunman?**
- **How good was the view you had of the gunman?**
- **How well could you make out details of the gunman's face?**
- **How easy was it for you to identify the gunman?**
- **How good of a basis did you think you had for making an identification?**

The Power of Confirming Feedback



Difference between 'control' and 'confirming feedback' = Manufactured false confidence

Post-Identification Feedback Articles

Bradfield, A. L., Wells, G.L, & Olson, E.A. (2002). The damaging effect of confirming feedback on the relation between eyewitness certainty and identification accuracy. *Journal of Applied Psychology, 87,* 112-120.

Douglass, A. B., & Steblay, N. (2006). Memory distortion in eyewitnesses: A meta-analysis of the post-identification feedback effect. *Applied Cognitive Psychology, 20,* 859-869.

Dixon, S., & Memon, A. (2005). The effect of post-identification feedback on the recall of crime and perpetrator details. *Applied Cognitive Psychology, 19,* 935-951.

Hafstad, G. S., Memon, A., & Logie, R. (2004). Post-identification feedback, confidence and recollections of witnessing conditions in child witnesses. *Applied Cognitive Psychology, 18,* 901-912.

Neuscahtz, J. S., Lawson, D. S., Fairless, A. H., Powers, R. A., Neuscahtz, J. S., Goodsell, C. A., & Toglia, M. P. (2007). The mitigating effects of suspicion on post-identification feedback and on retrospective eyewitness memory. *Law and Human Behavior, 31,* 231-247.

Neuschatz, J. S., Preston, E. L., Burkett, A. D., Toglia, M. R., Lampinen, J. M., Neuschatz, J. S., Fairless, A. H., Lawson, D. S., Powers, R. A., & Goodsell, C. A. (2005). The effects of post-identification feedback and age on retrospective eyewitness memory. *Applied Cognitive Psychology, 19,* 435-453.

Semmler, C., & Brewer, N. (2006). Post-identification feedback effects on face recognition confidence: Evidence for metacognitive influences. *Applied Cognitive Psychology, 20,* 895-916.

Semmler, C., Brewer, N., & Wells, G. L. (2004). Effects of postidentification feedback on eyewitness identification and nonidentification. *Journal of Applied Psychology, 89,* 334-346.

Skagerberg, E. M. (2007). Co-witness feedback in lineups. *Applied Cognitive Psychology, 21,* 489-497.

Smith, S.M., Lindsay, R.C.L., & Pryke, S. (2000). Postdictors of eyewitness errors: Can false identification be diagnosed? Journal of Applied Psychology, 85, 542-550.

Wells, G.L., & Bradfield, A.L. (1998). "Good, you identified the suspect:" Feedback to eyewitnesses distorts their reports of the witnessing experience. *Journal of Applied Psychology, 83,* 360-376.

Wells, G.L., & Bradfield, A.L. (1999). Distortions in eyewitnesses' recollections: Can the postidentification feedback effect be moderated? *Psychological Science, 10,* 138-144.

Wells, G. L., Olson, E., & Charman, S. (2003). Distorted retrospective eyewitness reports as functions of feedback and delay. *Journal of Experimental Psychology: Applied, 9,* 42-52.

Wright, D. B. & Skagerberg, E. M. (2007). Post-identification feedback affects real eyewitnesses. *Psychological Science, 18,* 172-178.

Eyewitness Confidence

Mistaken identifications do not always result in the conviction of innocent people.

Convictions of the innocent more often occur when eyewitnesses are both mistaken **and confident.**

False certainty: Certain (confident) and yet mistaken

The Importance of a Confidence Statement

A confidence statement is a declaration provided by the eyewitness *immediately upon identification and before any feedback is provided,* in which he articulates *in his own words* the level of confidence he has in the identification he has made.

Systemic Factors Leading to Misidentification Can Be Addressed

- Research shows that eyewitnesses seek and receive unintentional cues from **non-blind lineup** administrators about which person to pick from the lineup;
- Proper **lineup composition** (resembling description, not suspect) enhances accuracy;
- **Instructions** reduce pressure on eyewitnesses;
- Research shows that memory is extremely malleable; immediate **confidence statements**, in witnesses' own words, most reflect witnesses' actual memory; and

Eyewitness Identification Reform: Support Across Nation

- The following jurisdictions are among those that have implemented "double-blind" as standard procedure: The states of **New Jersey, Ohio** and **North Carolina**; various jurisdictions in **Maryland**; **Denver, CO**; **Dallas, TX**; **Hennepin County, MN (Minneapolis); Ramsey County, MN (St. Paul); Santa Clara County, CA; Suffolk County, MA (Boston); Northampton, MA**.

- The states of **Georgia** and **Wisconsin** have recommended/promulgated "double-blind sequential" voluntary guidelines and incorporated them into law enforcement training.

INNOCENCE PROJECT

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CONNECTICUT INNOCENCE PROJECT

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TESTIMONY OF KAREN A. GOODROW, DIRECTOR, CONNECTICUT INNOCENCE PROJECT

Raised Bill No. 6344
An Act Concerning Eyewitness Identification

Judiciary Committee Public Hearing
March 9, 2011

My name is Karen Goodrow and I am the Director of the Connecticut Innocence Project, which is a part of the Division of Public Defender Services. **We support Raised Bill No. 6344, An Act Concerning Eyewitness Identification** which would mandate the use of "double-blind, sequential" live and photographic lineups as well as other reforms to insure the reliability of identification procedures, in connection with the investigation of crimes. "Double–blind" refers to a lineup administrator who is not aware of who the actual suspect is, and to a witness who is informed that the perpetrator may or may not be in the array. Sequential refers to the presentation of subjects to the witness one at a time for a determination, rather than presenting all subjects simultaneously as part of a group.

As has been demonstrated by the exoneration of James Calvin Tillman, misidentification by eyewitnesses accounts for a large majority of the wrongful convictions occurring in our justice system. The new bill requires only "*when practicable*" that law enforcement utilize best practices to avoid misidentifications and wrongful convictions of the innocent.

Significant research in the field of eyewitness identification, particularly by Professor Gary Wells of the University of Iowa, indicates that the risks of mistaken eyewitness identification are reduced when these techniques are used. Without the "double-blind" procedures, it has been shown that awareness of the actual suspect by the administrator can result in inadvertent verbal and non-verbal cues that influence the witness to select the actual suspect. Simultaneous presentation of the subjects frequently results in identification of the subject who most closely resembles the perpetrator, regardless of whether or not it is the right person.

Although the Chief State's Attorney has implemented an eyewitness identification protocol that is an improvement over past practices, the protocol is neither double-blind nor sequential, and is limited in its effect. Furthermore, the protocol is not an adequate substitute for these procedures and is still susceptible to the risks that double-blind, sequential procedures are designed to minimize. As such, the Office of Chief Public Defender urges that these procedures be statutorily required.

In June, 2006, DNA technology freed James Calvin Tillman from eighteen and a half years of imprisonment for crimes which he did not commit. His wrongful conviction was the result largely of misidentification. In January, 2008, through the same DNA technology, the real perpetrator was identified and arrested.

To date, there have been 266 post-conviction DNA exonerations nationwide. (www.InnocenceProject.org) It is poignantly clear that misidentification accounts for the vast majority of wrongful convictions. Eyewitness research has linked two basic factors with misidentifications: unintentional suggestion to the witness and "relative judgment process", which refers to the tendency when viewing a simultaneous photo array for the witness to pick out the photo of the person who looks most like the real perpetrator relative to the other people in the array. States continue to pass legislation which will reduce the likelihood of misidentification through the use of "best practices" in identification procedures. These best practices include two basic components: sequential photo arrays and double-blind administration. It is time for Connecticut to do the same.

Sequential Photo Arrays: photos are presented to the witness one at a time, rather than simultaneously. Research demonstrates that sequential photo arrays discourage relative judgment and encourage absolute judgments of each person presented, because eyewitnesses are unable to see the subjects all at once and are unable to know when they have seen the last subject.

"Double Blind" Procedure: the person administering the photo array does not know who the suspect is, and is not in a position to unintentionally influence the witness's selection. Research demonstrates that persons conducting experiments of any kind in which they know the desired or correct outcome, often unwittingly cue the subject of the experiment or misinterpret the results based on their knowledge or desired outcome. If the administrator of a photo array does not know the identity of the suspect, he/she cannot provide any cues to eyewitnesses. It is important to understand that this recommendation does not presume any deliberate impropriety by law enforcement.

We support and urge the following additional best practices, as set forth in Raised Bill No. 6344:

1. **Communication to the witness:** no communication either verbal or non-verbal should be made to the witness by the administrator or by anyone else, which communication may influence the identification procedure.

2. **Non-suspect fillers:** photos of individuals in the array who are not the suspect are called "fillers"; these photos should be chosen to minimize suggestiveness that might point toward the suspect. In other words, the photos of non-suspects should generally be chosen to resemble the witness's description of the perpetrator. When multiple arrays are shown to a single witness, the fillers should be different from the ones previously used.

3. **Advisement to the witness:** consistent with the Chief State's Attorney's voluntary changes to eyewitness protocols, and the mandate of the Connecticut Supreme Court in 2005 in the case of State v. Ledbetter [275 Conn.534, 579 (2005)], each witness should be instructed that the real perpetrator may or may not be present in the array and that the administrator does not know which person is the suspect. Research shows that telling the witness that the perpetrator may or may not be present reduces mistaken identification rates. Telling witnesses that the administrator does not know who the suspect is will also help prevent witnesses from mistakenly looking to the administrator for cues.

4. **Eyewitness confidence:** an eyewitness's statement of confidence should be assessed immediately after the identification, and prior to any information given to the witness about the identification to protect against artificially inflated confidence levels.

5. **Multiple identification procedures:** avoid multiple identification procedures in which the same witness views the same suspect more than once. Research demonstrates that multiple procedures create the potential for suggestiveness and the potential to contaminate the witness's memory.

6. **Written record of the identification procedures:** to insure reliability and accuracy, written records should be maintained of all identification and non-identification procedures, including the date and time of the procedure, order of photographs, individuals present, photographs utilized, identification information, and source of photographs.

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TESTIMONY OF JUSTICE DAVID M. BORDEN ON RAISED BILL NO. 6344 AN ACT CONCERNING EYEWITNESS IDENTIFICATION

MARCH 9, 2011

COMMITTEE ON JUDICIARY

My name is David M. Borden, and I am a Retired Justice of the Connecticut Supreme Court, having reached the mandatory retirement age in 2007, and I now serve as a Judge Trial Referee on the state Appellate Court. I want to make it clear, however, that I appear here today solely in a private capacity; I do not appear as a representative of the Judicial Branch or any court within that branch.

While on the Supreme Court, I was the author in 2005 of the court's opinion in *State* v. *Ledbetter*, 275 Conn. 534, in which the court, for the first time, took notice of the body of science on the issue of eyewitness identification. Based on that science, the court mandated that, when an eyewitness was to be shown a photo or live lineup, it was required that he or she be instructed that the perpetrator may or may not be in the lineup. The purpose of this instruction was to reduce the likelihood of what the science terms the "relative judgment process." The relative judgment process is the process by which the eyewitness, having been shown, say, a photo lineup of six photographs of possible perpetrators, tends to choose that photo that most resembles the perpetrator *relative to the other photographs.* In other words, the witness is comparing the photos, not to his or her memory of the event, but to each other and choosing which of them *most resembles the perpetrator relative to each other.* It is like an SAT test in which there is no "none of the above" listed.

Since leaving the Supreme Court, I have become more deeply interested in, and have extensively studied, the entire issue of the science of eyewitness identification,

and its relation to how our law enforcement institutions and courts deal with the question of the reliability of eyewitness identification. I have read much of the scientific literature on the subject, have spoken with several of the leading researchers in the field as well as with several law enforcement officials who are familiar with the science and who have incorporated it into their protocols, and have given lectures and made presentations on the subject to interested groups, including the Judges of the Superior Court at their annual Connecticut Judges Institute, and a joint session of the state's attorneys and public defenders. All of this has led me to several conclusions.

First, eyewitness identification evidence is critical to the law enforcement process. In many cases it is the most telling evidence of guilt, and the evidence that juries are most prone to rely on. This, in turn, means that it is absolutely essential that it be secured in such a way that it is as reliable as we can make it. When it is reliable, it is an essential tool in convicting the guilty. When it is unreliable, however, it means, not only that an innocent person is likely to be convicted, but that, just as bad, a guilty person will be left free, uninvestigated, to continue to commit other crimes. In other words, once an innocent person has been misidentified, the investigation is likely to be discontinued and the real perpetrator is free to commit other crimes. Thus, it is in law enforcement's best interests to make sure that it follows protocols that will ensure, as much as possible, that eyewitness identification evidence be reliable. It is also essential that law enforcement--particularly the police departments and the state's attorneys--be persuaded of the propriety of any changes to be made, so that any such changes have their full support.

Second, we now know, because of the many DNA exonerations in the past

several years, that in the area of eyewitness identifications, we are doing something wrong. Of the approximately 270 DNA exonerations nationwide in the past several years--including several in Connecticut--more than 75% involved positive--yet false--eyewitness identifications. And, of course, because those were all DNA cases, they by definition do not include the many cases in which there is no DNA evidence--such as drive-by shootings, street muggings, convenience store robberies, and homicides and sexual assaults in which, for one reason or another, there is no DNA evidence. It is likely, therefore, that there are thousands of other cases, in which the conviction was based principally on an eyewitness identification, and in which the wrong person was identified and the real perpetrator is still at large.

Third, the scientific community has come to general consensus, based on literally thousands of experiments and hundreds of published, peer reviewed papers. That consensus centers on two main points. One: that any eyewitness identification procedure be administered in a double-blind manner. That is, the person administering the procedure should not be the investigating officer or be anyone else who may know which person in the photo array is the suspect. This is based on the universally accepted scientific principle that, in order for any scientific test--particularly one involving face to face contact between the tester and the person being tested--to be considered valid, it must be double blind—meaning that neither the tester nor the person being tested knows the desired answer--because science has conclusively demonstrated that testers with such knowledge unconsciously "leak" their knowledge to the person being tested--by body language, tone of voice, facial expression, and numerous other physical manifestations. This is not a matter of the integrity of the

tester; it is simply a matter of human nature.

The second point of scientific consensus is that using what is known as a "sequential" presentation of photos--that is, one photo at a time--is a more conservative and generally more reliable method than what is commonly known as a "simultaneous" presentation of photos--that is, six or eight photos shown at the same time. It is more conservative in that it produces significantly fewer misidentifications of innocent persons than does a simultaneous presentation. Its only drawback is that it does produce somewhat fewer "misses" on the identification of the actual perpetrator than does a simultaneous presentation. The scientific community, therefore, considers the question of whether to use the simultaneous or the more conservative sequential process as a matter, not of science, but of policy.

This brings me to what law enforcement is currently doing--not only by choice and custom, but because it is what the courts--including the United States Supreme Court--have been requiring since 1977, when the Supreme Court issued its landmark decision in *Manson* v. *Brathwaite*. Law enforcement has not been using double blind administration, and has been using simultaneous rather than sequential presentation of photos in eyewitness identification procedures. Thus, there is a disconnect between what the science tells us and what we are doing. And what we are doing is resulting in unreliable results in many cases.

What, then, should the state of Connecticut do about this? One approach is that taken by Raised Bill No. 6344. Admirably, this bill sets out protocols for both double blind administration, where practicable, and for sequential rather than simultaneous presentations. And, all other things being equal, I would support such a bill.

But, as in most areas of life, all other things are not equal. What is missing is the factor that will produce the necessary "buy in"--cooperation, if you will--of law enforcement, the process that will expose law enforcement personnel in this state to the science and convince them that is in their job's best interest--which is to convict the guilty and leave the innocent alone--to change their procedures so as to produce the most reliable eyewitness identification evidence that can be produced. That is, to treat one's memory like crime scene evidence--with an imaginary yellow tape around it so as to avoid corruption of the evidence.

I believe that the most effective legislative way to accomplish this necessary cooperation, rather than to mandate these procedures now, is instead to create a legislative task force to study the science in the next two years and then report back with a series of recommendations of best practices for law enforcement and the courts to follow in the area of eyewitness identification. This is the course followed by most of the jurisdictions that have adopted the protocols of both sequential and double blind procedures. This task force should gather and review all of the science on the issue of eyewitness identification in an unbiased and dispassionate manner. It should be composed of representatives of all the stakeholders: legislators; the Chief State's Attorneys and state's attorneys; municipal chiefs of police and trainers; the Chief Public Defender and public defenders, as well as a representative from the Innocence Project; the judiciary; and the Victim's Advocate; and should also include a dean of one of our state's law schools, and one or more social scientists. With a broad based constituency like this, the task force's recommendations will carry great weight; will be persuasive; will, I believe, help immeasurably in bringing Connecticut's procedures appropriately into

harmony with science; and will, most importantly, help to bring the guilty to justice and leave the innocent alone. I therefore urge that this course of legislative action be adopted.

State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY

JOINT COMMITTEE ON JUDICIARY

H.B. No. 6344 (RAISED):
An Act Concerning Eyewitness Identification

March 9, 2011

The Division of Criminal Justice respectfully requests and recommends the Committee's Joint Favorable Substitute Report for H.B. No. 6344, An Act Concerning Eyewitness Identification, to establish a commission to study and make recommendations to the law enforcement community and the General Assembly concerning the procedures utilized in the identification of suspects by eyewitnesses to criminal activity and related issues. The Division has been involved in discussions with various parties interested in these issues and believes that a thorough study by a properly constituted commission is necessary to fully explore the important issues in question. The Division stands ready not only to participate in such a commission but to work with the Committee and all other interested parties in determining the composition of such commission and the scope of its work.

The accuracy of eyewitness identifications has been an issue in only a relatively small number of cases in Connecticut because police and prosecutors recognize that eyewitnesses can be mistaken and, therefore, continue investigating in order to develop either independent evidence or corroborating evidence. The law enforcement community and the courts have been very aware of this issue over the years and have adjusted as knowledge has increased. One example of this is the instructions that are now given to eyewitnesses before they are shown photographs. The Division of Criminal Justice, in conjunction with other law enforcement agencies, developed this protocol for eyewitness identification that incorporates "double-blind" procedures when practicable. We have included a copy of the "Witness Instructions for Photo Identification" with this testimony. The protocol is taught on an ongoing basis through the Police Officer Standards and Training Council (POST) to municipal police officers and in Connecticut State Police training as well. It should be noted that for all practical purposes the eyewitness identification procedure in Connecticut virtually always involves the use photographs. A "live" lineup is an extreme rarity in this state.

The Division of Criminal Justice appreciates the fact that the proponents of the bill as raised by the Committee believe it would improve the accuracy of eyewitness identifications. We also recognize that there have been a variety of studies done by social scientists that may develop "best practices" in this area and that there is vociferous support for some of these

studies from various groups. The Division and some police departments in our state have unsuccessfully sought grant funding to conduct such studies on our own. As we have noted in the past very little of the study in this area has involved actual witnesses of crime or other actual witnesses. The general mode of study often has been to take undergraduate psychology students, show them a grainy video of a simulated crime, and then to ask them to identify the perpetrator in a photo array.

Given the conflicting conclusions of the studies that have been done to date, the Division is in favor of the creation of a commission or task force to determine what should be the "best practices" in Connecticut and how those practices can best be implemented. The establishment of a commission or task force would allow for a thoughtful examination of all questions and a thorough review and evaluation of the various studies already done. The legislature should not be enacting statutes requiring what are claimed by some to be "best practices" when there are studies that are in dispute without examining not only the reliability of the studies but the practical implication of requiring Connecticut's diverse law enforcement agencies to follow them.

In conclusion, the Division would respectfully ask that the Committee to amend H.B. No. 6344 to provide for a comprehensive study by an appropriately constituted commission or task force to study these issues. We would be happy to provide any additional information or to answer any questions the Committee might have.

ADDENDUM

WITNESS INSTRUCTIONS FOR PHOTO IDENTIFICATION

CASE NUMBER: _____ DATE: _____ TIME:

1. I will ask you to view a set of photographs.
2. It is as important to clear innocent people as to identify the guilty.
3. Persons in the photos may not look exactly as they did on the date of the incident, because features like facial or head hair can change.
4. The person you saw *may* or *may not* be in these photographs.
5. The police will continue to investigate this incident, whether you identify someone or not.

I understand the instructions, have viewed the photos, and have identified #_____

I understand the instructions, have viewed the photos, and have NOT identified anyone

Witness comments regarding identification:

Witness' name (print)

Witness' signature

Officer's signature

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LINE 17

CONNECTICUT POLICE CHIEFS ASSOCIATION

342 North Main Street, West Hartford, Connecticut 06117-2507
(860) 586-7506 Fax: (860) 586-7550 Web site: www.cpcanet.org

Testimony to the Judiciary Committee
March 9, 2011
Chiefs Anthony Salvatore & James Strillacci, Connecticut Police Chiefs Association

The Connecticut chiefs support HB #6368, **AAC Return of Stolen Property.** Currently police must seize and hold as evidence stolen property valued over $250, though it is seldom needed as evidence by the court; property of less value may be returned to the owner. The requirement:

- Deprives the rightful owner of the property until the court orders its return.
- Requires an officer making a routine misdemeanor larceny arrest to log and inventory evidence, keeping the officer off the street longer.
- May add to police overtime cost.
- Makes police responsible for storing and accounting for this evidence.

The General Assembly raised the property-value thresholds on degrees of larceny in 2009 (P.A. 09-138), the threshold on holding stolen property as evidence has not changed since 1985 (P.A. 85-263), from $50 (1976) to $250. This bill raises the threshold to $500 (the Larceny Fifth threshold) which is reasonable.

We oppose SB #954, **AAC Electronic Recording of Custodial Interrogations,** which would make in-custody statements in capital, A, and B felonies inadmissible unless videotaped. It would exclude on purely procedural grounds voluntary and truthful admissions—and any information or evidence gained thereby—without any consideration of their validity. It would let guilty persons escape justice.

We do not object to this body supporting promising police practices. The Division of Criminal Justice and selected police agencies have been recording suspect interviews in a pilot program. Early results are positive, and several police departments are starting recording on their own initiative, including ours.

Other agencies may be deterred by the cost-- to prepare an interview room, buy and install cameras, microphones, wiring, storage and retrieval devices, and train personnel. Transcription, if required, is quite expensive. Funding would encourage more departments to participate.

We oppose HB #6344, **AAC Eyewitness Identification.** Many of its provisions are redundant; Connecticut police and prosecutors adopted measures to remove suggestion from identification procedures in 2005. The provisions not adopted then were excluded intentionally.

We omitted the "blind" administrator for a line-up because in smaller departments, or in the case of a notorious crime, it may be impracticable to find an officer who doesn't know the suspect.

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CONNECTICUT

GEN. ASSEMBLY

SENATE

PROCEEDINGS

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-- Madam President --

THE CHAIR:

So ordered.

SENATOR LOONEY:

-- move to place the item on the Consent Calendar.

Thank you, Madam President.

Calendar page 21, Calendar 647, House Bill 6267; Madam President, move to place the item on the Consent Calendar.

THE CHAIR:

So ordered.

SENATOR LOONEY:

Thank you, Madam President.

Continuing Calendar page 21, Calendar 650, House Bill 6344; Madam President, move to place the item on the Consent Calendar.

THE CHAIR:

So ordered.

SENATOR LOONEY:

Thank you, Madam President.

Calendar page 21, Calendar 648, House Bill 5326; Madam President, move to place the item on the Consent Calendar.

Immediate roll call has been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber. Immediate roll call has been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber.

Madam President, the items placed on the first Consent Calendar begin on Calendar page 10, Calendar Number 478, House Bill 6488; Calendar 480, House Bill 5256.

Calendar page 11, Calendar 513, substitute for House Bill 6557.

Calendar page 12, Calendar Number 535, substitute for House Bill 6226; Calendar 555, House Bill 6259.

Calendar page 13, Calendar 560, substitute for House Bill 5368; Calendar 567, substitute for House Bill 6157.

Calendar page 14, Calendar 574, substitute for House Bill 6410; Calendar 578, House Bill 6156.

Calendar page 15, Calendar 591, House Bill 6263; Calendar 594, substitute for House Bill 5508; Calendar 595, substitute for House Bill 62 -- 5263.

Calendar page 16, Calendar Number 606, substitute for House Bill 6581; Calendar 609, substitute for House Bill 6501.

Calendar page 17, Calendar 610, substitute for House Bill 6224; Calendar 613, substitute for House Bill 6453.

Calendar page 18, Calendar 614, substitute for House Bill 5068; Calendar 628, substitute for House Bill 5008; Calendars 633, House Bill 6489.

Calendar page 19, Calendar 635, substitute for House Bill 6351; Calendar 640, House Bills, 6559.

Calendar page 20, Calendar 642; House Bill 6595.

Calendar page 21, Calendar 645, substitute for House Bill 6267; Calendar 648, substitute for House Bill 5326; Calendar 650, substitute for House Bill 6344.

Calendar page 22, Calendar 651, substitute for House Bill 6540.

Calendar page 23, Calendar Number 655, substitute for House Bill 6497; Calendar 657, substitute for House Bill 6262; Calendar 658, House Bill 6364; Calendar 659, House Bill 5489.

Calendar page 24, Calendar 660, substitute for House Bill 6449.

Calendar page 36 -- correction -- Calendar page 33, Calendar Number 390, substitute for Senate Bill 1181.

Calendar page 36, Calendar Number 481, House Bill 5472.

Calendar page 37, Calendar Number 584, substitute for House Joint Resolution Number 34; Calendar 585, substitute for House Joint Resolution Number 54; Calendar 586, House Joint Resolution Number 65, Calendar 587, House Joint Resolution Number 66.

Calendar page 38, Calendar 588, House Joint Resolution Number 80; Calendar 589, House Joint Resolution Number 63; Calendar 590, House Joint Resolution Number 35; Calendar 620, substitute for House Joint Resolution Number 45.

Calendar page 39, Calendar Number 621, substitute for House Joint Resolution Number 47; Calendar 622, House Joint Resolution Number 68; Calendar 623, substitute for House Joint Resolution Number 69; Calendar 624, substitute for House Joint Resolution Number 73.

Calendar page 40, Calendar 625, substitute for House Joint Resolution Number 81; Calendar 626, House Joint Resolution Number 84.

Madam President, I believe that completes the items placed on Consent Calendar Number 1.

THE CHAIR:

Thank you.

SENATOR LOONEY:

Thank you, Madam President.

THE CHAIR:

Mr. Clerk, please call for a roll call vote, and the machine will be open.

THE CLERK:

The Senate is now voting by roll call on the Consent Calendar. Will all Senators please return to the Chamber. The Senate is now voting by roll call on the Consent Calendar. Will all Senators please return to the Chamber.

THE CHAIR:

Senator Gomes?

If all members have voted; all members have voted? The machine shall be locked.

And, Mr. Clerk, will you please call the tally.

THE CLERK:

Motion is on adoption of Consent Calendar Number 1.

Total number voting	36
Those voting Yea	36
Those voting Nay	0

Those absent and not voting 0

THE CHAIR:

Consent Calendar passes.

The Senate will stand at ease for a moment.

(Chamber at ease.)

SENATOR LOONEY:

Madam President?

THE CHAIR:

Yes, Senator.

The Senate will come to order.

SENATOR LOONEY:

Yes. Madam President, the Clerk is in possession of Senate Agenda Number 5 for today's session.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Madam President, the Clerk is in possession of Senate Agenda Number 5, dated Wednesday, June 8, 2011.

Copies have been made available.

THE CHAIR:

Senator Looney.