PA12-111

HB5501

House	**4220-4231**	**12**
Judiciary	**3214-3241, 3294-3299, 3305-3310, 3316-3318, 3335, 3337-3338, 3342-3355, 3366, 3368-3372, 3402-3416, 3426-3441**	**59**
Senate	**4173, 4178-4179**	**3**

Total 74 pgs.

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here. And I will ask the -- all the legislators here to give her a warm hand, please.

DEPUTY SPEAKER KIRKLEY-BEY:

Welcome to our chamber, and I hope you enjoy your day. Another lovely Marie.

Are there any others, before I call the next bill?

No.

Will the Clerk please call Calendar Number 1 -- 232.

THE CLERK:

On page 43, Calendar 232, Substitute for House Bill Number 5501, AN ACT CONCERNING EYEWITNESS IDENTIFICATION PROCEDURES, favorable report by the Committee on Public Safety.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Fox, you have the floor, sir.

REP. FOX (146th):

Thank you, Madam Speaker.

I move for the acceptance of the joint committees' favorable report and passage of the bill.

DEPUTY SPEAKER KIRKLEY-BEY:

The motion before us is acceptance of the joint committees' favorable report and passage of the bill.

Will you comment further?

REP. FOX (146th):

Thank you, Madam Speaker.

At the end of last session, the General Assembly passed a bill that created a task force to review eyewitness identification procedures in the course of arrests in criminal situations.

Madam Speaker, the task force came together and it met over the period of months that preceded this coming session. And as a -- the members of the task force included myself and my co-chair on the Judiciary Committee, as well as the ranking members of the committee. There was associate supreme court justice -- a retired Associate Supreme Court Justice David Borden; as well as representatives from police, from prosecutors' office, defense counsel, academics, and representatives from the Innocence Project, as well as members of the public.

And Madam Speaker, during the course of the task force's deliberations, it was truly a -- an eye-opener for myself, as well as many of the members of the task force, when we looked at how science has advanced in terms of the way we handle eyewitness identification procedures.

Madam Speaker, the -- the task force completed a -- a report in early February and a bill was presented and heard during the course of a public hearing before the Judiciary Committee and voted on by the Committee, and here we are today to discuss those recommendations as well as to present a bill that will seek to improve vastly our -- our policies when we -- when -- in terms of eyewitness identification procedures.

Madam Speaker, what -- what the bill itself does is it looks for us to develop best practices, and amongst the best practices are ensuring that whenever feasible the -- an identification in a witness lineup situation is done in a double-blind scenario. And what that means is that the officer who's conducting the examination of the witness would not know who the suspect is. And the science has shown that that is a important factor in not leading the witness into determining who, in fact, they -- may have been the culprit or who is this subject of an investigation.

Also, the bill recommend -- or the bill states that examinations should be done in a sequential method when -- when using photographs rather than simultaneous. And what that means is that photographs would be presented to a witness one by one as opposed

to laid out on a table, for example, where it -- the studies have shown overwhelmingly that in those situations, the witness will identify the person who looks most like the -- the culprit but not necessarily the actual culprit.

Madam Speaker, also, amongst the recommendations of the task force in incorporating in this bill is that a -- a written record of the identification procedure would be a part of the process when utilizing -- when going through the process of witness identification.

Now, also, Madam Speaker, I should point out that both, POST as well as the -- the State Police Training Association, were very active in this process, and we have asked them, as part of this bill, to develop procedures that can be incorporated by our cities and towns.

Now, Madam Speaker, the Clerk does have an amendment, LCO Number 3815, and I would ask that that be called, and I be permitted to summarize.

DEPUTY SPEAKER KIRKLEY-BEY:

Will the Clerk please call LCO 2815, designated House Schedule "A" -- pardon me.

REP. FOX (146th):

3815 -- I'm sorry, Madam Speaker, 3815.

DEPUTY SPEAKER KIRKLEY-BEY:

3815 -- excuse me -- designated House Schedule "A."

THE CLERK:

LCO 3815, House "A" offered by Representatives Fox and Hetherington, Senator Coleman and Senator Kissel.

DEPUTY SPEAKER KIRKLEY-BEY:

The Representative asks leave to summarize.

Is there any objection? Is there any objection?

Hearing no, please proceed, Representative Fox.

REP. FOX (146th):

Thank you, Madam Speaker.

This amendment is aimed to clarify what may have not been clear in the underlying bill that passed out of committee. And what it addresses is local cities and towns may put into place their own policies with respect to eyewitness identification procedure but they will utilize the best practices that are put together by -- by POST when developing these practices.

And I've move adoption of the amendment.

DEPUTY SPEAKER KIRKLEY-BEY:

Will you speak further on the amendment that is before us?

Let me try your minds --

The motion before us is on adoption.

Will you remark?

Let me try your minds. All those in favor please indicate by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER KIRKLEY-BEY:

Those opposed, nay.

The ayes have it. The amendment is adopted.

Will you remark further on the amendment that is before us? Will you remark further on the amendment that is before us --

Will you remark further on the bill as amended?

Representative Fox.

REP. FOX (146th):

Thank you, Madam Speaker.

I would just, once again, like to say it was a -- an education for myself, as well as the others who participated in this -- in this task force.

The -- it's an issue that's been discussed for a number of years, but it's one that when the groups got

together and they had an opportunity to listen to each other. It was -- even though they are oftentimes on opposite -- on opposite sides in their various professions, they do -- they did display a tremendous respect for each other. And they -- and I think, as a result, the -- the product was one that was unanimous in terms of the recommendations.

And I'd just like to thank all the members of the task force, including the Ranking Member Representative Hetherington, who was a valuable member of this task force.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you.

Will you remark further?

Representative Sampson of the 80th, you have the floor, sir.

REP. SAMPSON (80th):

Thank you, Madam Speaker.

Just a question to the proponent of the bill, if I could, through you.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Fox, prepare yourself.

Representative Sampson, please frame your question.

REP. SAMPSON (80th):

Thank you, Madam Speaker.

First off, I want to thank the -- the distinguished Chairman and the rest of the folks that worked hard on putting this legislation together.

I was the only no vote in the Judiciary Committee, I think if I remember correctly it was because I had some concerns about how this would impact small town police departments and whether or not they would be able to accommodate this. It seems to me that the -- the amendment goes a long way to correcting that situation.

And if I could have some affirmation from the Chairman that that is indeed the case and that small town police departments are not going to be affected in an negative manner, I would appreciate that and it would help me support the bill.

So, through you, Madam Speaker, I -- if the chairman could just elaborate on that and maybe reassure me, I'd appreciate it.

Thank you.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Fox.

REP. FOX (146th):

Thank you, Madam Chairman.

I thank the Representative for his question.

I can represent that small towns were definitely represented as part of the task force. Their concerns were definitely represented. We did hear during the course of the -- the hearings that we had. As part of the task force, from professionals who are representing small towns and it did become clear that small towns can become also implement certain procedures that can benefit their -- the quality of their eyewitness identification, as well.

But certainly the concerns of small towns are not only -- were not only taken into account as part of the final report, but they will be taken into account going forward.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Sampson.

REP. SAMPSON (80th):

Thank you, Madam Speaker.

And thank you to the kind gentleman for his answers. I appreciate that that makes me feel a whole lot better about this bill, and I will be supporting it.

Thank you.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you.

Representative Hetherington, you have the floor, sir.

REP. HETHERINGTON (125th):

Thank you, Madam Speaker.

I was privileged to serve on this task force. There was a considerable amount of work by the many participants as Representative Fox indicated. There was the State's Attorney and the public defenders, the Innocence Project member and various others from the academic and the criminal justice field who worked together on this.

The primary features of the conclusion are as Representative Fox mentioned: the requirement for double-blind administration of line-ups so that neither the administrator nor the eyewitness knows the identity of the alleged perpetrator. And, also, that the lineup, whether it's by photograph or otherwise, must be conducted sequentially rather than simultaneously.

It's interesting to learn that there's significant difference when witnesses have the

opportunity to see the suspects or the participants in the lineup one at a time rather than all at once.

So the -- the conclusion was that making these two primary changes would greatly enhance the reliability of eyewitness identification, which can be unreliable. And the going -- the plan going forward is to have a strong participation by the -- the police and their training units. So that we continue to not only develop good practices and current practices along with the best of science but also that we continue to see law enforcement represented in this because they'll have to -- law enforcement will have to take the major responsibility for administering the new procedures.

I think the -- the work, was it well thought out one. The conclusions are sound, and we have also the basis for continuing work in this area, which will I think be beneficial and improve their reliability of our criminal justice system.

So I would -- I would join the proponent in urging approval.

Thank you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you, Representative.

Will you remark? 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. Members take your seats. The machine will be opened.

THE CLERK:

The House of Representatives is voting by roll call. Members to the chamber. The House is taking a roll call vote. Members to the chamber, please.

DEPUTY SPEAKER KIRKLEY-BEY:

Have all members voted? Have all members voted?

Please check the board to see that your vote has been properly cast. The machine will be locked, and the Clerk will prepare the tally.

Will the Clerk please announce the tally.

THE CLERK:

House Bill 5501 as amended by House "A."

Total number voting	148
Necessary for passage	75
Those voting Yea	148
Those voting Nay	0
Those absent and not voting	3

DEPUTY SPEAKER KIRKLEY-BEY:

The bill, as amended, is adopted -- passes.

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THE CHAIR:

So ordered, sir.

SENATOR LOONEY:

Thank you, Madam President.

Also calendar page 14, Calendar 438, House Bill 5347. Move to place the item on the consent calendar.

THE CHAIR:

So ordered, sir.

SENATOR LOONEY:

Thank you, Madam President.

Moving to calendar page 15, where we also two items. First is Calendar 441, House Bill 5501. Madam President, move to place this item on the consent calendar.

THE CHAIR:

So ordered, sir.

SENATOR LOONEY:

Thank you, Madam President.

Also calendar page 15, Calendar 442, House Bill 5536. Madam President, move to place this item on the consent calendar.

THE CHAIR:

So ordered, sir.

SENATOR LOONEY:

Thank you, Madam President.

Moving to calendar page 16. The first item is Calendar 445, House Bill 5145. Move to place the item on the consent calendar.

On page 13, Calendar 426, House Bill 5443; on page 14, Calendar 438, House Bill 5347; Page 14, Calendar 439, House Bill 5388; page 15, Calendar 441, House Bill 5501.

Also on page 15, Calendar 442, House Bill 5536; page 16, Calendar 445, House Bill 5145; page 16, Calendar 446, House Bill 5395; on page 16, Calendar 448, House Bill 5414; page 17, Calendar 451, House Bill 5548; page 18, Calendar 456, House Bill 5285.

Also on page 18, Calendar 458, House Bill 5031; on page 20, Calendar 468, House Bill 5217; page 21, Calendar 471, House Bill 5164; page 22, Calendar 476, House Bill 5263.

On page 23, Calendar 485, House Bill 5237. On page 25, Calendar 497, House Bill 5512; page 26, Calendar 502, House Bill 5497; page 26, Calendar 503, House Bill 5409.

On page 28, Calendar 512, House Bill 5424. And on page 30, Calendar 522, House Bill 5289.

THE CHAIR:

That seems correct.

Mr. Clerk, would you please call for a roll call vote on the consent calendar. (Inaudible.)

THE CLERK:

Immediate roll call has been ordered in the Senate. Will senators please return to the Chamber. Immediate roll call has been ordered in the Senate.

THE CHAIR:

Senator Gomes, would you like to vote, please. Thank you.

If all members have voted, if all members have voted, the machine will be closed.

Mr. Clerk, would you please call a tally.

THE CLERK:

On today's consent calendar,

Total Number Voting 35
Necessary for passage 18
Those Voting Yea 35
Those Voting Nay 0
Those Absent and Not Voting 1

THE CHAIR:

The consent calendar passes.

Are there any points of personal privilege or announcements? Are there any points of personal privilege or announcements?

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Yes, Madam President, if there are no announcements or points of personal privilege, we will, of course, be in session tomorrow -- or actually it's later today but -- but not on Thursday. But --

THE CHAIR:

Okay. Promise?

SENATOR LOONEY:

-- we will -- we will convene later this morning. We will have a -- announce the Democratic caucus at eleven followed by session at noon today.

Thank you, Madam President.

With that, would move the Senate stand adjourned, subject to the call of the chair.

THE CHAIR:

So ordered, sir. Everybody drive safely.

On motion of Senator Looney of the 11th, the Senate, at 12:32 a.m. adjourned subject to the call of the chair.

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search engines. So good afternoon, Justice Borden.

JUSTICE DAVID BORDEN: Good afternoon, Senator Coleman, Ranking Member Senator Kissel, other Members of the Judiciary Committee. My name is David Borden. I am a Retired Justice of the Connecticut Supreme Court now serving as a Judge Trial Referee on the Appellate Court.

And I am Chair of the Eyewitness Identification Task Force, which was created by the 2011 General Assembly. And I appear here in support of Raised Bill Number 5501, AN ACT CONCERNING EYEWITNESS IDENTIFICATION PROCEDURES. And that bill incorporates the unanimous recommendations of the Eyewitness Identification Task Force.

And with me, right behind me, are Chief State's Attorney Kevin Kane, Karen Goodrow, the Director of the Connecticut Innocence Project, and Professor David Cameron of Yale University, who are members of the task force and who will briefly follow my testimony.

First, some brief background for you. The Task Force was created because more than 278 DNA exonerations in the past 15 years have made it clear that our currently employed eyewitness identification procedures were producing an unacceptably high rate of misidentifications.

We know now that because more than, we know that, because more than 75 percent of those exonerations involved positive eyewitness identifications. In addition, the scientific community had, on the basis of thousands of experiments and hundreds of peer-reviewed papers, concluded that there were two best

practices that could significantly reduce the incidence of those misidentifications.

These two best practices were, first, that the identification procedure be conducted in a double-blind way. That means that the officer administering the procedure not know who in the identification array, which is the group of photographs shown to the eyewitness, who the suspect was.

And this was in line with established scientific principles that in any scientific test, the person administering the test must not know the desired outcome so that he or she could not leak that information in any way to the person being tested or influence the response or the level of certainty of the person being tested.

The second best practice was that the photos be shown sequentially, that is, one at a time rather than simultaneously, which is all at once in a group. And this was to reduce the incidence of what the social scientists called the relative judgment process by which a person looking at the photo array tended to pick out the photo that most resembled the perpetrator of the crime relative to the other photos in the array, rather than the photo that most resembled his or her memory of the perpetrator.

Thus, in a photo array in which the actual perpetrator was not present, the person making the identification tended to select someone who most resembled the perpetrator relative to the other photos in the array.

Now the legislation that you produced in 2011 had two parts. The first part mandated that as of January 1, 2012, all police departments

use double-blind procedures where practicable. The second part established the Eyewitness Identification Task Force to study the issue of sequential versus simultaneous procedures.

And at that point in time, when this Task Force was created, although there was a wealth of laboratory science supporting the use of sequential, of the sequential method, there was no authoritative field study on the issue. The 2011 legislation required the Task Force to report back to you by April 1 of this year. The Task Force was specifically designed to include all of the relevant stakeholders.

In addition to me as Chair, it consists of the following members, the Co-Chairs of this Committee, Representative Fox and Senator Coleman, the two Ranking Members, Representative Hetherington and Senator Kissel, Dr. David Cameron of Yale University, Senior Assistant State's Attorney Richard Colangelo, the State's Victim Advocate, Michelle Cruz, Dr. John DeCarlo of the University of New Haven, Deborah DelPrete Sullivan of the Office of the Chief Public Defender, Attorney Robert Farr, former Member of this Committee, Thomas Flaherty, Executive Director of the Police Officer Standards and Training Council, better known as POST, Karen Goodrow, Director of the Connecticut Innocence Project, LaResse Harvey of the Better Way Foundation, Chief State's Attorney Kevin Kane, Duane Lovello, the Chief of Police of Darien, Lieutenant Clayton Brown of the State Police Training Academy, he replaced recently Lieutenant Regina Rush-Kittle, Brad Saxton, Dean of the Quinnipiac University School of Law, Lisa Steele of the Connecticut Criminal Defense Lawyers Association, and Beau Thurnauer, the Deputy Chief of the East Hartford Police Department.

So you can see that there was, from the entire spectrum of law enforcement and criminal justice and science, there was a, everybody was represented on this Task Force. It was ably staffed, pro bono, by Sherry Haller and Ron Shack of the Justice Education Center and by Alex Tsarkov and Deborah Blanchard of this Committee's staff.

After meeting biweekly from November through January, hearing testimony from the most eminent scientists in the field, as well as from law enforcement officials in this and other states, including from Chief Lovello, who is a member of our force, we issued our report on February 2, two months early, and our recommendations are unanimous.

I also add that in addition to considering the scientific studies, we were fortunate that just prior to our first meeting on September 21, the results of a widespread field study, sponsored by the American Judicature Society, on the issue of sequential versus simultaneous procedures, was published, and the results of that study fully supported the science that had preceded it.

And we were fortunate to hear personally from Dr. Gary Wells of Iowa State University and from Dr. Jennifer Dysart of John Jay College of Criminal Justice, who were two of the persons responsible for that study and who are among the nation's leading scientists on the entire issue of eyewitness identification.

Let me now turn briefly to those recommendations, which are embodied in the bill before you. First, the bill modifies the requirement that all procedures be double blind where practicable by adding the option

of what is being called blind rather than double blind.

This option, which is supported by the scientists and by law enforcement personnel elsewhere, simply means that the officer administering the procedure does not know which photograph the eyewitness is viewing during the procedure and so is not in a position to leak the information about whether that person chose the suspect or not.

And the most common method in this regard is what is known as the folder shuffle method whereby each photo is placed in a folder, and the folders are then shuffled and presented to the witness to view without the officer knowing which of the photos the witness is viewing.

Second, the bill requires that all identification procedures be sequential and that they be accompanied by a set of appropriate instructions. And the purpose of these instructions is to ensure the integrity of the identification procedure.

Third, the bill requires that there be a written record of the identification procedure that includes all the necessary information about it, again, to ensure the integrity of the procedure and to be sure that there is a reliable record of how the procedure was conducted.

In this regard, however, there is one part of the bill as currently drafted that I suggest be amended. And this recommendation of amendment also has the support of the Committee. Section 15(D), as drafted, requires that there be a written record of the, quote, order in which the photographs or

persons were presented to the eyewitness, unquote.

This appears on page five of eight of the bill. This, I think, and we all believe, is too broad, because where the folder shuffle method is used, the officer will not know and cannot know the order in which the witness viewed the photographs.

I suggest, therefore, that this section be eliminated and that what must be recorded in this regard be left to the guidelines that the bill contemplates will be established by POST and SPTA, the State Police Training Association.

And I have one other suggestion, which does not appear in my written testimony but which I have discussed with other members of the Task Force. The legislative deadline that the bill imposes for POST and SPTA to establish its guidelines and policies is now set in the bill as October 1 of this year. I think that's too ambitious.

That will not give them really full, enough time, adequate time to do that. And I suggest that that be extended from October 1, 2012, to February 1, 2013. Give them a few more months to, in which to fully prepare those guidelines and policies which are going to be so important as we go forward.

And this brings me to the recommendation incorporated by the bill that both POST and SPTA jointly develop and promulgate uniform mandatory policies and appropriate guidelines based on best practices to be followed by all municipal and state law enforcement agencies. This is a key component of our recommendations and the bill, because it's imperative that all

law enforcement agencies follow the same procedures and protocols and that they be based on best practices, as those may be disclosed over time.

Finally, the bill would continue the Task Force in existence for two years, during which it would aid both POST and SPTA in the establishment of those policies and guidelines, gather statistics regarding how the new procedures are working, and oversee the implementation of the new procedures.

We contemplate that there will be, of necessity, major law enforcement training programs established by POST and SPTA and that the Task Force will be available to help in that effort.

In conclusion, with these two suggested amendments that I have mentioned, I urge the Committee to report the bill favorably. I believe, and the Task Force unanimously believes, that it will constitute a major step forward in the administration of criminal justice in this state. I'll be glad to answer any questions that any of you has.

SENATOR COLEMAN: Chairman Fox.

REP. FOX: Thank you, Mr. Chairman. And thank you, Justice Borden. And we had our symposium earlier this morning, so many of us had an opportunity to thank you as well as the other members of the Task Force for their efforts in bringing this bill together and bringing this process together.

For those who were not here, I'd just like to once again say it was an extremely rewarding experience to work with the professionals who made up the Task Force as well as my Co-Chair,

Senator Coleman, the Ranking Members, John Kissel, Senator John Kissel, Ranking Member Representative John Hetherington. It really was a great group that came together.

You've gone through this bill with us very extensively, so I've had an opportunity to go back and forth with you a number of times. I do, in addition to not only discussing the underlying bill, I also, it's my understanding that there is consensus with respect to your proposed recommendations for some changes. I think that we can make those changes and proceed forward. But, once again, thank you for your leadership during this process.

JUSTICE DAVID BORDEN: Thank you, Representative Fox.

SENATOR COLEMAN: Judge, as you were going through your recitation of the members of the Task Force, I know your reference to Lieutenant Rush Kittle. I learned this afternoon, actually this morning after the symposium, that she was promoted to Major.

JUSTICE DAVID BORDEN: Oh, Major, okay.

SENATOR COLEMAN: Yes. So she's now Major Regina Rush-Kittle. Congratulations to her, and --

JUSTICE DAVID BORDEN: I join in that, Senator.

SENATOR COLEMAN: Thank you to her for her work in behalf of the task of the Committee. You mentioned in your testimony as well that there were 270 DNA exonerations, and I didn't catch over what period of time those 270 occurred.

JUSTICE DAVID BORDEN: Yeah, it's actually 273, and it's over the past 15 years or so. And I just learned a few moments ago from Professor

Cameron right behind me that a 274th right here in Hartford has just come to light. There's another. So now that figure nationwide would be 274.

SENATOR COLEMAN: Okay. Thank you. And --

JUSTICE DAVID BORDEN: And it's over the past 15 years or so.

SENATOR COLEMAN: Thank you. And as Representative Fox indicated, I have to say that I was never a great science student, that was not my forte, but this subject matter was interesting to me, and I want to thank all of the members of the Task Force for both making it interesting and understandable.

I think we had a great group, and they've contributed, I think, mightily to a product that we can all be proud of and that I anticipate will be well received by the Members of the General Assembly. Certainly, last but not least, I'm thanking you for your leadership of the Task Force and putting your influence and your weight behind the recommendations of the Task Force.

JUSTICE DAVID BORDEN: Thank you.

SENATOR COLEMAN: Thank you. Senator Kissel.

SENATOR KISSEL: Thank you very much, Mr. Chairman. I'd like to be associated with the remarks of the Co-Chairs. You just did a fabulous job, and I don't know if it's contemplated that you would be heading up the Task Force going forward, but if that's at all possible, that would be great for the people of the state of Connecticut.

I think stressing that you want unanimity coming out of the Task Force was an excellent strategy, and it really, I think it really helped moved the process along. You know, I put in a couple of cents, but so many other people worked so hard for hours and hours and hours, the Chief State's Attorney, Kevin Kane, and Attorney Goodrow, I know you two in particular, I mean, swapping information back and forth on weekends and Sundays and everything else.

It's a huge effort, and this is not an easy proposition. I'd like to think that Connecticut's really moving forward in a very positive direction and that we can be a role model for other states.

And what it tells me is that there's great hopes for things down the road in other areas of law enforcement and criminal justice. So I can't thank you enough. You know, retirement, still huge amount of public service, so much there to give back to the people of the state of Connecticut.

I just consider myself really honored and privileged to just be able to observe it all and participate in a very small fashion, but to see folks from the four corners of the state of Connecticut in so many different areas, whether it's academia, law enforcement on the streets, whether it's defending folks that are innocent.

One thing I'll tell you, though, that I've learned above and beyond all this, it is just unacceptable to me, and I hope that we can get our arms around it, that we are so backlogged in our DNA analysis here in the state of Connecticut, because everywhere I turn, what it tells me is that there may be somebody

that's sitting in a cell right now that does not belong there but for the fact that there's this huge, hundreds if not thousands of backlog of DNA analysis, because we just don't put the resources there.

And as was brought out through the incredible statements made this morning by our guest, there could be really bad people out there right now that but for that analysis we could get and prevent some crime that may take place tonight, tomorrow, Sunday that's going to change someone's life and rob someone's life. And so we've got a long way to go when it comes to making sure that we are up to speed regarding that. So thank you, Your Honor.

JUSTICE DAVID BORDEN: And thank you, Senator, for your very kind remarks. Let me just echo that it was such a true pleasure for me to chair this Task Force. The Co-Chairs of this Committee and the Ranking Members were enormously helpful.

And the working culture that we created on this Task Force of cooperation and mutual respect and collegiality and all searching simply for the best solution for the people of the state of Connecticut was truly rewarding. I was proud to be associated with it.

SENATOR COLEMAN: Are there other Members with questions or comments? Seeing none, let me just conclude by saying that I don't know anybody in this Legislature who is not interested in improving the quality of justice that's administered in this state to the best that it can be.

And I certainly think that the work of this Task Force insofar as I believe it will contribute to reducing the number of mistaken

eyewitness identifications has certainly moved us and the criminal justice system in this state in that direction.

So once again, thank you to you, Justice Borden, and to all the members of the Eyewitness Identification Task Force for their very much appreciated contributions.

JUSTICE DAVID BORDEN: Thank you.

KAREN GOODROW: (Inaudible).

SENATOR COLEMAN: Now is this a panel presentation?

JUSTICE DAVID BORDEN: Yes.

SENATOR COLEMAN: Okay.

HB 5501

KAREN GOODROW: We're trying to make it, I think, more efficient with the Committee's permission. Thank you. My name is Karen Goodrow. It's nice to see you again. I'm the Director of the Connecticut Innocence Project. We are part of the Office of the Chief Public Defender. We support the bull. Susie Storey, the Chief Public Defender, supports the bill. I'll be very brief.

Obviously, from my personal perspective, my interest is in protecting the innocent, but also, as I think Senator Coleman just indicated, we all want to do what we can do to make the process in Connecticut fair and more reliable, and that's what this bill does.

And I also think it's important to remember that we're not creating out of whole cloth a concept that has not been utilized in other states, as part of the tasks that Justice Borden gave us was to look at what's been going on in other states.

And there have been other states that have successfully implemented double blind or blind with sequential. And we heard on the Task Force from some of our colleagues in law enforcement from Massachusetts and that it's been going successfully without burden. So I would encourage the Committee to adopt the bill.

I would also indicate, as I mentioned in my testimony the other day with regard to the hope of abolition of the death penalty, it's important to remember conservatively only about ten percent of cases, criminal cases, have DNA, so we actually are dealing with and grappling with in my office a number of cases where there was an identification.

And the question is was this a misidentification, and, again, unlike the lucky few that we've had so far, there isn't DNA that's going to prove innocence. So I think this also dovetails nicely with the prior testimony that this body has heard.

And, you know, there's a lot of people, and it's worth mentioning, because of the members of the Task Force who were lucky enough to work together, and we all, even Kevin and I got along remarkably well, he's smiling, every day in every court, every trial court around the state, there are defense lawyers, some of them are private lawyers, some of them are public defenders, there are prosecutors, there are judges who've been grappling with very real issues with, regarding identifications and potential misidentifications.

The police grapple with it. Kevin spoke this morning at the symposium. He told us about a case when he was a young prosecutor where he

and the police grappled with it. So it's not only the folks on the Task Force that all of us have become familiar with each other, it's important to remember that this is a huge tool, a very large tool, for the people who deal with this on a day-by-day basis. Thank you, again. It's been a pleasure and an honor to serve on the Task Force. Thank you.

SENATOR COLEMAN: Karen, the relationship between you and Attorney Kane has been not only informative but also entertaining. You guys might want to consider taking that show on the road.

KAREN GOODROW: I don't think we could agree on that. That's the only problem. Thank you, Senator.

SENATOR COLEMAN: Professor Cameron.

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DAVID CAMERON: Thank you, Senator Coleman, and I want to thank you and Representative Fox and Senator Kissel and Representative Hetherington for your wisdom in creating this Task Force and your enlightened guidance throughout our deliberations. This was really an extraordinary experience for me and I think for all of us on the Task Force.

And all of you, along with Justice Borden, are responsible for the result that we have, which we hope will be adopted. As you know, I'm a professor of political science at Yale, and I was nominated for this Task Force in part fulfilling the requirement that a social scientist be on it. Actually, there are two social scientists on this, John DeCarlo, who you heard from this morning, and myself.

I don't want to take a lot of time. I wrote a quite extensive summary, overview, of

laboratory experiments and the field studies that appears in appendix four of the report and a somewhat reduced two-and-a-half-, three-page testimony that you have before you. I would say, and I think all of you know, that since 1989, there have been almost 300 exonerations by DNA of wrongful convictions.

And the Innocence Project has found that the overwhelmingly most important cause that has been, has occurred in more than 75 percent of those wrongful convictions is eyewitness misidentification by one or more eyewitnesses. So this is a very important and serious issue.

Public Act 11-252, which was originally, I think, House Bill 6544 last year, on, which, in support of which I testified, represented, I think, an important step forward in dealing with the eyewitness identification issue.

But there was one, it took an important step forward in attempting to rectify what the Innocence Project correctly views as the most problematic aspect of the procedure, which is the administration of the eyewitness ID procedure. And 252 stipulated that when practicable, the eyewitness ID procedure would be double blind, that is, the officer conducting it wouldn't know who the suspect was.

Now I think back when practicable language created something of a loophole, and I think it was perhaps best illustrated by the fact that only seven of the 73 departments in the state that were surveyed by the Task Force last fall indicated that they were using double blind. And only 24 of the 73 saw that they would not face any difficulties in implementing double blind administration as of January 1st, 2012.

I think the bill that you have before you now deals with that problem in a very good way, and it's a solution that came to the Task Force, as you know, through the consultations with and the appearance of members of law enforcement from out of the state who explained blinded administration and the shuffle method of sequential presentation to us.

And I think Section 1(c)(2) does provide a very adequate remedy so that we can feel that with that part of the bill approved we will have in effect blind or double blind administration in all IDs. As you know, the focus of the Task Force was on the issue of sequential versus simultaneous presentation.

And it seems to me, I won't summarize what I've written in the testimony, I won't read what I've written in the testimony except to say that the lab experiment seems to me at least the best of the more than 70 lab experiments that have been conducted over the past three decades, have demonstrated that the sequential method of presentation reduces the frequency of filler IDs, that is, of the identification of innocent individuals rather than the suspect. And that's a consistent finding in the lab experiments.

And in the best of the field studies, the American Judicature Society study that was just completed and published last summer, the result, the bottom line result is that the controlling for everything else in the ID procedure, instructions, administration, so forth, controlling for everything else, simultaneous presentation resulted in 18 percent of filler ID, that is,

misidentifications occurred in 18 percent of the line-ups and 12 percent in the sequential.

One way to read that is that that is essentially a 33 percent reduction in misidentifications by going from simultaneous to sequential. To put it another way, if you were to go from sequential to simultaneous, you would increase the number of false identifications, misidentifications by 50 percent. It doesn't mean sequential presentation will eliminate all misidentifications, but it will reduce them substantially.

One of the most interesting findings that came out of that Judicature Society study that was highlighted by Gary Wells when he appeared last fall was the fact that the sequential method with two labs actually increased the frequency of suspect IDs as well in their study. That was something that was quite contrary to all of the previous lab experiments.

It also indicated that people who were exposed to the sequential method were much less certain about not being able to make an ID if they, in fact, didn't make an ID. And that is also a very interesting and important finding.

So I, again, I want to thank you for creating this Task Force and the opportunity to participate it, participate in it, and I hope very much that your Committee will put this bill forward for approval by the General Assembly. Thank you.

SENATOR COLEMAN: You're very welcome. And two things. This morning at the symposium, I singled out the representation of the law enforcement community on the Task Force for a

particular comment and compliment, and that's because of the dynamics of this Legislature. But I didn't mean to do that to the exclusion of any other representatives on the Task Force.

And, Professor Cameron, I think the scientists and the academicians on the Task Force, including Dean Saxton and Professor DeCarlo, also contributed immensely to the work of the Task Force and significantly added to the legitimacy of the recommendations in the report and the credibility of the recommendations in the report, which will make it very well received by the Members of the General Assembly, because professors such as yourself are regarded not only as intelligent but for the most part nonpartisan. And I think nonpartisan on a subject like this will help move it. So we appreciate your efforts as well.

DAVID CAMERON: Thank you very much.

SENATOR COLEMAN: Senator Kissel.

SENATOR KISSEL: Thank you very much, Chairman Coleman. Professor Cameron, you know, you're just a brilliant guy. And when you start rattling out the statistics, I just sit in awe.

And I'll always remember the meeting where you had to leave a little bit early because around the holidays my oldest son and I saw War Horse, and you said, I have to go teach a class on the causes and effects of World War I, so maybe I could chat with you about that someday too.

And to Attorney Goodrow and to our special guest from North Carolina, Ms. Thompson, after

the presentation this morning, I was delighted, hopefully with the knowledge of Chief State's Attorney Kevin Kane, but I had stated that once upon a time I was a special public defender up at G.A. 13 in Enfield, and lo and behold, two of the state's attorneys that I dealt with every single day, Attorney Parakilas and Attorney DuBoff, were here throughout the morning listening to the presentation and the wonderful statements made by Ms. Thompson.

So at least I feel that there's people in charge up in our neck of the woods that get it, are interested, and that best practices will be aggressively followed, and that makes me feel really good about the whole thing, even more so than I did this morning not knowing who was up. So thank you both so much.

SENATOR COLEMAN: Senator Kissel reminds me, that's the second thing that I wanted to do, is just acknowledge a very compelling story that was told this morning by our visitor from North Carolina. And it sort of highlights the need for improving to the best that we can the practices and procedures related to eyewitness identification.

We so greatly appreciate the visit from Jennifer Thompson and her willingness to share a very personal and compelling story with us. And I'd just like, if she doesn't mind, have Ms. Thompson stand so that she can be acknowledged. Are there further questions or comments from Members of the Committee? Representative Hewett.

REP. HEWETT: Good afternoon, Professor Cameron.

DAVID CAMERON: Good afternoon.

REP. HEWETT: Over here. I was reading your testimony, and I want to know what's your thought. I'm a big, big advocate of arrestee DNA. And the reason I'm a big advocate for arrestee DNA is because the very thing that we're talking about right now is eyewitness identification. It doesn't work. Sometimes it does. Most of the time it doesn't.

And I think it's 26 states now in the United States have arrestee DNA, and that leaves a lot of states, and Connecticut not being one of them, that does not have arrestee DNA. And right now, we have conviction DNA.

Do you think that if we went, and this is just your opinion, do you think if we went to an arrestee DNA and got that DNA into the databank a little earlier, that we could solve a lot more of these cases that, where people were put in jail through eyewitness identification, do you think that we would have more exonerees? Just your opinion.

DAVID CAMERON: Absolutely. I also think that we would solve many cold cases. We now have, as you know from previous testimony, over 900 unsolved homicides in the state. You may remember, Representative Hewett, I was here last year testifying in support of a bill that would require DNA samples to be taken from all arrestees.

And we had very powerful testimony that day from the mother of Katie Sepich, who was a young graduate student in New Mexico who was murdered, and there was DNA, but it wasn't identified, and the person who actually committed the crime committed other crimes subsequently.

So I realize this puts me on the wrong side of the ACLU and many of my politically correct colleagues in the academy, but I do think that we should have a bill that would require a DNA sampling, samples be taken from all arrestees. I'm absolutely convinced we would get more exonerations, and we would get more arrests.

I realize there's a major problem in Connecticut now, which is that we have this backlog, years, cases and cases, years of backlog, the largest backlog of DNA samples still to be tested in the entire country. A Task Force has dealt with that and has put forward some proposals to deal with that, but I do think that's a place where we will, we should go and hopefully will go in the near future.

REP. HEWETT: I recently, as a matter of fact, I was actually talking to Mrs. Sepich about two weeks ago, and she is still on her campaign to go around this country, and before she's done, she wants all 50 states to have arrestee DNA. I was fortunate enough about a week and a half ago to visit the crime lab in the state of Connecticut, spent about three hours in there.

And I'm going to tell you something. What I seen in the crime lab, the backlog of evidence and the backlog of computer crimes that I've seen in that laboratory, and whoever hears this, I really don't care, because I'm a big advocate of getting rid of that backlog, they should come up here and arrest us for having a backlog of evidence in a crime lab that could exonerate people or put the guilty ones in jail, and we're sitting here with a backlog in that laboratory like that.

We should be ashamed of ourselves. For the state of Connecticut, we should be ashamed of

ourselves. Thank you so much for your testimony. I am on your side 100 percent. Thank you.

DAVID CAMERON: Thank you.

SENATOR COLEMAN: The DNA from arrestees is a subject, I guess, that will be continually debated, and the issue that's currently before the Committee happens to be eyewitness identification.

So I will throw the question out not really seeking a response to it, but should the person who is wrongly identified, wrongly arrested, wrongly prosecuted, wrongly sentenced, and wrongly convicted be subject to DNA samples, the requirement of the DNA samples?

With that, I think there are other Members of the Committee who may have questions. If not, again, thank you all for your presentation to the Committee and your work on the Task Force.

DAVID CAMERON: Thank you.

KAREN GOODROW: Thank you, Senator.

DAVID CAMERON: And I should say that what I said in response to the question was not on the agenda of the eyewitness ID Task Force.

SENATOR COLEMAN: I understand.

DAVID CAMERON: But it was my own personal opinion.

SENATOR COLEMAN: I understand.

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KEVIN KANE: Just, I don't want to wear the Committee's patience out before, I know I've done that before, and I'll do it again. Just

one quick thing. I want to make sure the Division of Criminal Justice agrees with this. I think it's clear how active and involved and eager to be involved the police departments of the state of Connecticut were to do this.

They want them to get things right. They want to help work. And I want to create, and, Representative Hewett, I agree with 99 and 9/10ths of everything you said, and I agree emphatically. One thing I want to say though is I don't want to convey the impression there are a lot of people locked up because of erroneously eyewitness identification.

There's a very small number of eyewitness identification cases. We don't rely on eyewitness identification any more than we have to. And one person wrongly convicted is one person too many, and we have to find out how to get those out. This is a huge step in the right direction. There are many elements. DNA is only one piece of evidence.

Eyewitness identification is the other piece of evidence. There are a whole array of pieces of evidence or circumstantial evidence to be considered. And I don't want the public to be under the impression that we're locking up hundreds and hundreds of people based on eyewitness identification, because that's not the case. Thank you very much.

SENATOR COLEMAN: Chairman Fox has a question for you.

REP. FOX: Sorry. Attorney, Kevin, I'm sorry. I have one question for you.

KEVIN KANE: (Inaudible).

REP. FOX: I'm sorry. You're right. And, actually, I do appreciate your willingness to try to be as fast as you could.

KEVIN KANE: Okay.

REP. FOX: And I hope that sets a trend, but --

KEVIN KANE: I rarely succeed.

REP. FOX: Yeah. I have one question, and it's something we talked about earlier this morning, and it's something that I mentioned, because I know there's a request to continue the Task Force --

KEVIN KANE: Yes.

REP. FOX: -- with respect, you know, to monitor how we proceed and how we, the progress we're going to make and then that to make sure that we are making the progress that we expect. And as you know, we talked about a bill last year that did pass with respect to the recording of interrogations, and it's one that you worked with us on and were helpful with.

And I know that there are, just like when you implement eyewitness identification procedures, we put some requirements or some follow-up issues on with respect to recording of interrogations, and we, I believe we asked some of that to be done by, or a good part of that to be done by you and your office.

And I would, since we are going to be looking, seeking for some funding in order to continue the Task Force, and I recognize that perhaps we may have to add certain members if we were to also include the recording of interrogation, well, how, what are your thoughts on it? I just wanted to give you an

opportunity to speak on it, because I know we had a chance to talk about it this morning, so --

KEVIN KANE: I'm very glad you asked. Justice Borden and I talked about this two days ago, two or three days ago it was. We very much need some help on recording interrogations, and most of the help that we needed is technical. We're dealing with equipment and with the things that the police departments are going to have to do.

That presents very different issues than the Eyewitness Identification Task Force is studying. I would love to have a committee that could assist on the voluntary recording of interrogations and dealing with the equipment, but I think, and I know Justice Borden agrees with me, the makeup of that committee or that task force should be very different than the makeup of the Eyewitness Identification Task Force.

They are both critically important areas. They are both, however, very different. One of the hard things I add, for instance, and this is probably the hardest thing that's going to be bringing it about, and I was already, I've been worried for years about how we could do this technically, is the Legislature required that I, by January 1st or the Chief State's Attorney by January 1st set technical standards.

We had a panel to do that. We got police chiefs, and we got a group of people involved and did set standards. But those standards are, it was extremely difficult to do. I'm not at all confident that the standards, they've already caused issues with police departments that have already purchased

equipment and whether or not that equipment is in compliance with the standard.

I would love to have the Legislature create a committee or a task force or a group or something like that to work with me and the chiefs of police to do this, because it's an important project. We have to do it right, and we have to do it in a way that the state of Connecticut, that the taxpayers of the state can afford. And that's a very different job and chore than the Eyewitness Identification Task Force has.

REP. FOX: Okay. Well, thank you. I suppose I thought that at least many of the individuals engaged in the Eyewitness ID Task Force would certainly have an opinion and some level of expertise in how to introduce the recording of interrogations.

And part of my rationale in exploring it was that if the door is open, and there's an opportunity to get funding, should you consider, you know, taking advantage of that? And if it meant adding a few people to the Task Force, I had just thought it might be something we can consider (inaudible).

KEVIN KANE: Well, if that's the only vehicle of funding, I would say, yes, I have some idea of some types of people who could be added to the Task Force, and actually, the people who would be important to do on that would be a, like a small subgroup of the Task Force. A lot of these issues are technical.

There's no, you know, the law is pretty well set with regard to the law of interrogations and, interview and interrogations and Miranda rules. The law is pretty well set. But these are surprisingly difficult technical issues

with regard to the nature of the equipment, the producing, need to have transcripts, the number of rooms, the wiring in their rooms, things that I've never imagined and have to learn about it very, very fast. But some more people to help work on that would be helpful, very helpful.

REP. FOX: Okay. All right. Well, we can talk about it further, but I just, I --

KEVIN KANE: And also it's a budget issue, because there's going to be a strain on the police departments to have to build interrogation rooms and wire and fit those rooms and on the staff, all, people all along the way are going to have to listen to these recordings now instead of just reading police reports.

REP. FOX: Okay. Well, no, thank you, and I'd like you to think about it, if you can, and I will continue to talk about it.

KEVIN KANE: I've more than thought. I'm eager. I want to do it --

REP. FOX: Okay.

KEVIN KANE: -- and absolutely want to do it and one way or the other, whether it's a part of the Eyewitness Identification Task Force, which I think another way would be preferable, because we could get the right people focused on that so we didn't cause other people to have to get involved, and everybody's time is very valuable. And the state's, I know the state's finances are very scarce, but --

REP. FOX: And I don't think as Legislators we can offer a lot in some of the technical aspects that you're talking about, but I think it, getting funding for any task force to continue

its work can be difficult, and getting funding for two can be more difficult. So I'm just trying to --

KEVIN KANE: Okay. We'll --

REP. FOX: -- see if there's a way to do it, so, okay. Thank you, though.

KEVIN KANE: Thank you.

SENATOR COLEMAN: We are very nearly, if not, in fact, within the second hour of our public hearing, so I'm going to begin to call from the public list. The first person signed on the public list is Kate Mangiafico and H. Thibodeau. It looks like a team of presenters.

KRISTIN MANGIAFICO: She's coming. Good afternoon, Senator Coleman, Representative Fox, and Members of the Judiciary Committee. My name is Kristin Mangiafico, and I am a correctional counselor, and I'm here today to support Senate Bill 367.

I have worked for the Department of Correction for 13 years and have been assigned to Northern Correctional Institution for just over a year. I love my job, and I truly love working at Northern. My coworkers are my brothers and my sisters, and the sense of loyalty and unity we have is none I've experienced at any other facility.

This unity comes from having to work with the state's most violent and often dangerous offenders. The basis of this bill comes from the issue of public indecency incidents. We, as women in the workplace, are continuously subjected to these inmates who repeatedly expose themselves to us, most times

parents come out of incarceration, or they get sucked into that second system and never really get the opportunities and the consistency that they need, they then become part of a system that does none of us any good either.

So I think the idea of pilots and all of the fingers that go from that and the questions that need to be asked, you know, secondary to maybe the nursery pilot so to speak probably are very important things, and I look forward to seeing that. Thank you.

SUSAN STOREY: Thank you.

SENATOR COLEMAN: Are there others with questions? Seeing none, thank you, Attorney Storey.

SUSAN STOREY: Thank you very much. Appreciate it.

SENATOR COLEMAN: Martin Looney.

SENATOR LOONEY: Good afternoon, Senator Coleman and Senator Kissel and Members of the Judiciary Committee. I'm Martin Looney, Senator from the 11th District representing New Haven and Hamden and here to testify in support of House Bill 5501, AN ACT CONCERNING EYEWITNESS IDENTIFICATION PROCEDURES.

It's no secret that eyewitness identification is a genuine conundrum in the criminal justice system, because, as we know, it is prone to stunning inaccuracy, but it is also, perhaps, the most compelling testimony in a courtroom so that the stakes regarding getting it right are very, very high.

Last year, I was honored to work with Justice Borden and this Committee on passage of Public Act 11-252, which requires that municipal

police departments and the Department of Public Safety adopt certain procedures regarding photo lineups and live lineup eyewitness identification.

These procedures include that when possible, the person conducting the identification procedure should not know who in the lineup or the photographs is the suspected offender and that the fillers in the lineup generally fit the description of the suspected offender.

The act, of course, also created a 19-member Eyewitness Identification Task Force to study eyewitness identification and criminal investigations and submit a report on best practices, including those regarding the use of sequential live and photo lineups. And I think that the Task Force report is certainly an excellent one.

And this Task Force, inspired by Justice Borden, was composed of a very diverse mix of persons with differing professional responsibilities within our criminal justice system and a full spectrum of professional perspectives as well as academic scholarship.

The Task Force, of course, included the Co-Chairs and Ranking Members of this Distinguished Committee, all of whom did an extraordinary job in probing questioning and evaluating the evidence presented, included Justice Borden himself, representatives of the Office of the Chief State's Attorney and Chief Public Defender, representatives of state and local police departments, legal scholars, social scientists, the state victim advocate, a representative of the Connecticut Innocence Project, representatives of the public, and representatives of the bar.

And that Task Force has examined the science of conducting sequential lineups, the use of sequential lineups in other states, the practical implications of state law requiring the sequential lineups, many other related topics. And the Task Force, in its recently submitted report on best practices and the legislation before you, reflects the work done by this impressive Task Force.

And passing House Bill 5501 would represent another improvement in the accuracy of our judicial system by further addressing the, this notorious paradox of eyewitness identification. And the bill adopts many of the recommendations of the Task Force requiring the Police Officer Standards and Training Council and the Division of State Police to collaborate to create uniform mandatory policies with appropriate guidelines based on best practices.

The bill further requires that these practices, best practices, be followed by all municipal and state law enforcement agencies and requires that every basic or review training program for police officers provide training to the officers and the administration of this eyewitness identification procedure.

And among the mandatory requirements of these best practices are that eyewitness identification lineups be sequential and double blind, and a detailed written record of each eyewitness identification is also required. In addition, the legislation would allow the Eyewitness Identification Task Force to assist POST and the Division of the State Police in developing policies and guidelines.

And the Task Force will also monitor the implementation of the law and recommend proposed legislation related to this issue. I would also ask that you consider implementing the recommendation for a pilot program for videotaping the double blind sequential procedures. This would provide additional useful information that could be used in future policies and guidelines.

And I wanted to thank the Committee for raising this important legislation and also for the excellent work of the Task Force in which the Chairs and Ranking Members played such a vital part during the interim. Thank you, Mr. Chairman.

SENATOR COLEMAN: Thank you, Senator. Are there questions? Senator Kissel.

SENATOR KISSEL: Thank you, Mr. Chairman. I also want to commend you, Senator Looney, for taking such a strong leadership role regarding this issue. I think in no small measure the Task Force moved forward and had excellent results because of the persistence of folks that felt that perhaps Connecticut could do things in a better way and be a role model and lead in best practices. And I sincerely hope that this feeling of kumbaya and bipartisanship lasts until the end of session.

SENATOR LOONEY: Thank you, Senator Kissel. And I appreciate your comments.

SENATOR COLEMAN: Other questions? Seeing none, thank you very much, Senator.

SENATOR LOONEY: Thank you, Mr. Chairman.

SENATOR COLEMAN: Jeff Kestenband.

JEFF KESTENBAND: Good afternoon, Senator Coleman, Members of the Committee. My name is Jeff Kestenband. I'm a criminal defense attorney with an office in Glastonbury. I've handled many cases involving eyewitness identification. And a large number of those cases I've wondered whether or not the identifications were reliable.

I'm here today to testify as a member of the Connecticut Criminal Defense Lawyers Association in support of Raised Bill 5501, AN ACT CONCERNING EYEWITNESS IDENTIFICATION. My testimony is designed to supplement the written testimony that has been submitted by Attorney Lisa Steele on behalf of CCDLA.

As the Committee knows, the two primary changes created by this bill are that it requires that all photo arrays be conducted using the double blind procedure when practicable as well as requiring that all photo arrays be conducted using the sequential method as opposed to simultaneous method.

What the research has shown, as the Committee knows from the prior testimony as well as its work in this area last year in creating the Eyewitness Identification Task Force is that implementing these procedures will increase the reliability of eyewitness identifications and thereby decrease the chance that people get convicted wrongfully. The changes are long overdue. They're absolutely a step in the right direction.

And on behalf of the CCDLA, we ask the Committee as well as the Legislature, to adopt these changes and thank the Committee and the Legislature and the Eyewitness Identification Task Force for its hard work in this area,

both last year and this year. I'd be happy to answer any questions.

REP. FOX: Yup. Oh. Well, thank you. Are there any questions? No. Seeing none, thanks for your testimony.

JEFF KESTENBAND: Okay. Thank you.

REP. FOX: Next, we have Officer McCealla and D. Ward. Good afternoon. Feel free to proceed. You can just please state your name, and you may begin your testimony.

ANGELA MCCEALLA: Okay. Good afternoon, Senator Coleman, Representative Fox, and Members of the Judiciary Committee. My name is Officer McCealla, and I'm here today to support Senate Bill 367. I have worked at Northern Correctional Facility for over seven years. I believe this bill should be passed as a Class B felony.

The inmates continue to perform these acts of public indecency in the prison every day, because it's not taken seriously, and it's not a felony. As a female officer, we should not have to deal with this type of behavior every day. As a female officer, being exposed to different types of public indecency acts has become a daily routine to the point where I can expect to see it every day.

The most common time when an inmate performs a public indecency act is when a female goes under tier, the tier of the hallway where we have to walk to go look at the inmate in their cell, to conduct their daily activities such as tour, feeding, distributing mail, and conducting their passes.

Arnone did indicate that the size of this universe is 30 to 40 inmates, and we've just got to get them to realize that these behaviors will have serious consequences. So thank you for coming and testifying.

DEBBIE WARD: Thank you.

ANGELA MCCEALLA: Thank you.

REP. FOX: Representative Hewett.

REP. HEWETT: I'd also like to thank you guys. I was, as I was telling you out in the hallway, there's no, I couldn't do what you guys do. I really couldn't. And I'd take my hat off to anybody that works as a guard in the prison.

And if it takes us getting you another tool to help you do your job the way you should be able to do it, because no one should be exposed to that, no one out here and no one in there. So whatever tool you need, you've got my vote. Thank you.

DEBBIE WARD: Thank you.

REP. FOX: Any other questions? Thank you very much.

DEBBIE WARD: Thank you.

REP. FOX: Next is Chief Salvatore and Chief Reed. Good afternoon, Chief Reed.

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MATTHEW REED: Good afternoon, Representative Fox, Senator Kissel, other Members of the Judiciary Committee. My name is Matthew Reed. I'm the Chief of Police of the South Windsor Police Department, and I come to here, come here to speak today on behalf of the Connecticut

Police Chiefs Association for which I am the Legislative Co-Chair.

I come to speak today in support of House Bill 5501, which is AN ACT CONCERNING EYEWITNESS IDENTIFICATION PROCEDURES. We have prepared and submitted written testimony, but I would just like to add a couple of comments. I sat through the symposium this morning, which was intriguing and very moving and very powerful.

Connecticut law enforcement supports the mission and the standards set forth in the Eyewitness Identification Task Force's report. The one question that the police chiefs have as far as the proposed legislation is just a question regarding how wise it is to codify in statute the specific procedural steps that police officers should engage in when they are preparing an eyewitness lineup or live show-up.

And I refer to the language in sections three through 15 which sets forth the very specific procedures that are to be engaged in by a police officer when they are doing this type of procedure. We agree that we should transition from simultaneous showing of photographs to sequential showing of photographs, and we agree that POST should be charged by statute with propagating, promulgating a proper procedure that is in line with or conforms to the standards set forth in the report issued by the Eyewitness Identification Procedure Committee.

However, we do question the wisdom of binding to the legislative process the specific procedures. As Representative Hetherington said during the symposium this morning, this is an ever-revolving body of scientific

knowledge dealing with eyewitness identification.

And if there is to be some sort of procedural change in the coming months or years, if we are to change the process or the procedure, we would then have to come back to the legislature and ask them to change police procedure. And I can think of no other profession where the Legislature has dictated this specific way a member of a particular profession has to engage in the activity of their profession.

So we support this. Connecticut police chiefs participated in the Committee, and we support the findings. But we just think that the statute should simply mandate the transition to the sequential format and then charge POST with coming up with all of the procedures in conformance with the statute or in conformance with the report.

In the coming days or in the coming week, you will hear testimony regarding a bill that is the result of the domestic violence task force. And that's exactly what that bill does in that it charges POST, one of the things it does is it charges POST with making some modifications to their policy in training officers.

It does not dictate the exact process that police officers should take when they arrive on the scene of a domestic violence call. And we think that that is good, because POST can be more flexible and can change with the times as the technology or as the science or the philosophy of that particular area changes. So that concludes my testimony, and I'll certainly answer any questions.

REP. FOX: Well, thank you. And I'm sure since you've been here, you also heard that there's going to be, there's a recommended change to some of the language in the bill that I think addresses some of the concerns you've just raised.

MATTHEW REED: There are a few changes. I would recommend that all of the language from section three through 15 be stricken, as those are the specific procedures. Some of that is new language introduced this year. Some of that is language that came out as a result of last year's bill before the Task Force was able to do their work.

Now that the Task Force has been able to do their work, all that information is contained in the recommendations of the Task Force. And, again, that would be the codification of those detailed steps that an officer takes when they're engaging in a live show-up or other eyewitness identification procedures.

REP. FOX: Could I ask you without regard to the specific procedures, do you agree that we should require sequential rather than simultaneous?

MATTHEW REED: Yes. Yes.

REP. FOX: Okay. And do you also agree with the, and when I say you, I'm talking about not you personally so much --

MATTHEW REED: Of course.

REP. FOX: -- the double blind (inaudible).

MATTHEW REED: Yes. We agree the methodology should change.

REP. FOX: Okay.

MATTHEW REED: It should be shifted to the sequential. We agree that the Task Force should remain so that if there are changes, there is a committee that can vet those changes and say to POST, make the recommendations to POST that they modify the way they set forth their policy.

But I just fear that in the out years, three years, five years down the road or further as there are changes made, although this Committee and Task Force has been very responsive, and this legislative body has been very responsive, who knows what the posture will be in the years to come?

And to bind the specific police procedures to the legislative process I think could be, could do this whole Task Force a disservice.

REP. FOX: Okay. Representative Hetherington.

REP. HETHERINGTON: Thank you. And thank you for coming forward with the specifics that you have. I just wanted to make sure though that I have been correct, perhaps they're in your written testimony, but you mentioned the lines before that were a problem in section three. Is that correct?

MATTHEW REED: I believe, yes, it is. Section three --

REP. HETHERINGTON: Yeah.

MATTHEW REED: -- is where it begins to set forth, it says, and I quote, "the eyewitness shall be instructed prior to the identification procedure," and then it starts to articulate

the specific instructions that the officer has to give.

And then as it moves into section four and section five and onward, it's giving very specific procedural instructions. And these are the same instructions that are provided in the Task Force report. In fact, I believe this is where a lot of this came from.

REP. HETHERINGTON: Right. Mm-hmm.

MATTHEW REED: So we have some redundancy in that we have it in the report, and now we have it statutorily. And I just don't know that having it statutorily is in the best interest of the process in the long term.

REP. HETHERINGTON: Okay. Thank you very much.

REP. FOX: Are there other questions or comments? Thank you very much, Chief.

MATTHEW REED: Thank you for the time.

REP. FOX: Next is Lisamarie Fontano. Good afternoon.

LISAMARIE FONTANO: Good afternoon. Good afternoon, Chairman Coleman, Chairman Fox, and Members of the Judiciary Committee. My name is Lisamarie Fontano. I am the President of AFSCME Local 387. Our union, along with correction locals 391 and 1565 represents nearly 5,000 front-line correctional employees in the state of Connecticut.

Our union supports Senate Bill 367 and House Bill 5249. Senate Bill 367 makes public indecency by inmates a Class D felony. Some inmates regularly masturbate in front of our

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And so I'm really hoping that this is the year, especially given the fact that legislation has been worked on by not only corrections but the state's attorney and the state police. So I am very hopeful that we can get this through. Thank you.

REP. FOX: I don't see any other questions from Members of the Committee, so thank you very much for your testimony. Chief Lovello to be followed by Michael Farrera. Has it been a long day for you, Chief?

DUANE LOVELLO: It is one. (Inaudible) for you too.

REP. FOX: Yeah.

DUANE LOVELLO: Good afternoon, Senator Kissel, Representative Fox, Representative Hetherington, Members of the Judiciary Committee. My name is Duane Lovello. I'm the Chief of Police in the town of Darien, and I'm here in support of Raised Bill 5501, AN ACT CONCERNING EYEWITNESS IDENTIFICATION PROCEDURES.

As an appointed representative of the Connecticut Police Chiefs Association to the Legislature's Eyewitness Identification Task Force, I support the bill and the recommendations of the Task Force but urge that lines 125 and 126 in the raised bill be stricken or modified.

The use of a folder shuffle blind method lineup under certain circumstances as recommended by the Task Force and included in the bill would preclude an officer from knowing the specific order in which the photos were presented and could leave the officer unable to record such order as required by

lines 125 and 126 in the bill. I think a method to address this issue is better left to being incorporated into the mandatory policy.

I support the bill's mandate that the Police Officer Standards and Training Council and the Division of State Police be charged with drafting mandatory policies implementing best practices and policies consistent with the statute and would urge restraint in further codifying such practices via statute.

Given that the bill requires the continued existence of the Task Force and its charge to research, evaluate, and recommend changes in best practices regarding eyewitness identification to the Police Officer Standards and Training Council and the Division of State Police, such changes could be accomplished more quickly by the Task Force than by legislation.

One small thing outside of my written testimony, I would like to endorse Justice Borden's request that the deadline for the mandatory policies be extended out to February 1st, 2013.

REP. FOX: Okay.

DUANE LOVELLO: No further testimony.

REP. FOX: Well, thank you. And for those who were not here this morning who, to be here for the eyewitness ID symposium that took place, it was made very clear that you are a very valued member of that Task Force and provided a lot of insight. And your cooperation and professionalism, I think, played a big part in getting this bill done. So I want to thank you for that.

And also in the course of the last several days since the bill came out, you immediately identified a concern that you had, which, because of the way the working group has, or the Task Force has been together, everyone concurred with your position on it, which I think, I think it will become part of the final bill with the change that you recommended. So thanks again for all of your service and for being part of this.

DUANE LOVELLO: Thank you very much. It was a privilege.

REP. FOX: Are there other questions or comments? Seeing none, thanks again, Chief. Michael Farrera.

MICHAEL FARRERA: Good afternoon, Representative Fox, Distinguished Members of the Judiciary Committee, and those (inaudible). My name is Michael Farrera. I am a resident of West Hartford and am currently enrolled as a graduate student at the University of Connecticut in pursuit of obtaining a master's degree in social work.

I was given the task of following a bill and furthering my, familiarizing myself with the legislative process and strengthening my path as a community organizer. I'm here in support of Bill Number 5288, AN ACT CONCERNING CHILDREN AND INCARCERATED WOMEN.

According to the National Conference of State Legislators in March of 2009, a prison disrupts positive, nurturing relationships between many parents, particularly mothers and their children. Research suggests that intervening in the lives of incarcerated parents and their children to preserve and strengthen positive family connections can

SENATOR KISSEL: Awesome. Great. Thank you so much.

AILEEN KEAYS: Thank you, Senator Kissel. Is that it?

REP. FOX: Are there other questions or comments? All right. Well, thanks a lot. Thanks for your testimony.

AILEEN KEAYS: Thank you.

SENATOR COLEMAN: LaResse Harvey is next.

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LARESSE HARVEY: Good afternoon, gentlemen and lady. I am the Founder and Executive Director of Civic Trust Public Lobbying Company. My name is LaResse Harvey. Civic Trust is a nonprofit c4 statewide organization that takes civic engagement beyond voting. Our advocacy trainings and lobbing services are free to our members. Today, I am speaking in support of House Bill 5288, AN ACT CONCERNING CHILDREN OF INCARCERATED WOMEN.

Connecticut is one of eight states that currently have a community-based residential program for mothers in the criminal justice system and their children. They show that Connecticut understands the need for both the parent and the child to bond.

In 2003, Alison Cunningham and Linda Baker created a study funded by the National Crime Prevention Centre named Waiting for Mommy: Giving a Voice to the Hidden Victims of Imprisonment. What Cunningham and Baker discovered are results most of us know. Parental separation triggered by incarceration is different than separation for any other reason.

months old at the time of my incident, did not.

Although my children did not grow up in foster care, the relationship between my son and I was similar. I had to rebuild and reestablish a relationship with him at the age of seven when I returned home from my incarceration.

There was no continuation, the bond was dramatically severed, and as a child, he did not understand nor did he remember me from the time of my incarceration from when he was a year and five months old until he was three years old, a critical stage of bonding between a mother and a child.

I hope you support the passage of House Bill 5288, AN ACT CONCERNING CHILDREN OF INCARCERATED WOMEN, because as a woman who was formerly incarcerated who had children, in my experience, it is better for the child and for the mother to have that bonding during the first two years of their life, of that child's life.

And I also support House Bill 5501, AN ACT CONCERNING EYEWITNESS ID PROCEDURES, except for that line where it says police officers will have to write down the monitoring when reshuffling doing it at a second glance. That would make it invalid in what we're trying to do.

SENATOR COLEMAN: Are there questions for Ms. Harvey?

A VOICE: (Inaudible).

SENATOR COLEMAN: Certainly. I've probably thanked everybody else. Let me thank you publicly for your service on the Eyewitness Identification

Task Force. And thank you for your input on these other bills as well.

LARESSE HARVEY: Thank you.

SENATOR COLEMAN: Giselle Jacobs is next.

GISELLE JACOBS: Good afternoon, Your Honorable Senator Coleman, Senator Kissel, and other Honorable Members of the Judicial Committee. My name is Giselle Jacobs, and I am a Community Outreach and Advocacy Specialist for the Breaking the Cycle-Empowering Families Support Group, and I'm a lifelong resident of Hartford. I am for Bill, I am in support of Bill Number 5288, AN ACT CONCERNING CHILDREN OF INCARCERATED PARENTS, CHILDREN OF INCARCERATED WOMEN, rather.

I remember the first time I spoke here at the LOB. Sister Cathy at My Sisters' Place on Capen Street asked me to prepare testimony, because they were going to cut funding for homeless shelters. It was in '89. I was nine months pregnant with my daughter, homeless, even after being just, even after having just received my Honorable Discharge from the United States Army.

Her father lived in Washington, D.C., which was my last duty station. I chose to go to a homeless shelter as opposed to temporarily moving in with my mother even though I was her only child, because at the time, she was struggling with personal issues.

Just seven years ago, I was pregnant and locked up, lying on a metal bed, looking up to the ceiling wondering how did I get here. At the time, I was a single parent of three beautiful children, living in a three-bedroom colonial in East Hartford, C230 Benz in the

GISELLE JACOBS: Thank you very much. We now meet at 2550 Main Street in Hartford.

SENATOR COLEMAN: Is this the first experience at the Capitol for most of you?

A VOICE: Yes.

A VOICE: Yes.

SENATOR COLEMAN: Okay. Well, I hope it was a good experience, and I hope you'll come back.

A VOICE: We will.

A VOICE: Thank you.

GISELLE JACOBS: Thank you, Senator Coleman.

A VOICE: (Inaudible).

SENATOR COLEMAN: Monica Fore is next.

MONICA FORE: Good afternoon, Committee.

SENATOR COLEMAN: Good afternoon.

MONICA FORE: I'm here in support of H.B. 5501, but there are some questions, and so I'm looking into the best practice. Dear Legislators, how does the state of Connecticut apply best practices in eyewitness cases when it involves acts of racial profiling? How does best practices apply to police departments who have racist officers on its force?

How much weight does an eyewitness have when a police department has a nigger-free radio station? Following are photographs of Bristol police officers mingling with white individuals, conspiring together to make a

false arrest on me for breach of peace, for being belligerent, and risk of injury for beating up my grandchild.

Does any of these photographs show a child injured? Does it show an individual being belligerent with an officer? These photographs were taken on the day the Bristol police falsified a criminal case against me for speaking out against them. Several people, including some city employees, can confirm my whereabouts on August the 3rd, 2009, when the police falsely arrested me.

I was in city hall talking to people in the finance department and the mayor's assistant when racist officers claimed I committed the act. More importantly, Reverend Daniel R. Collins can confirm that we walked together to the police department from city hall.

The eyewitnesses are Michael Drouin, Stashia Luddy, her brother, and Sergeant Barton and other officers who were made because we were going up against them for false reports at the radio station and issues of them attacking me at my home. They lied about an incident with a car seat. Stashia gave them evidence from my home regarding our civil rights work so that they could make the false arrest.

She was ordered by Judge Levine to give me the baby on a certain date. She told everyone that she would lie. The police department and city officials had the course information but plotted with Stashia to deny the court order. Can you imagine police officers adopting a uniform eyewitness code to carry out their hateful acts?

What penalty language does the bill have regarding police officers and eyewitnesses who

lie on innocent people? Sadly, it wasn't just the Bristol Police Department who played a positive role in the racial profiling. The Office of the Chief State's Attorney and the Attorney General's Office were well informed of the illegal acts.

John Whalen, Scott Murphy, Detective Surrot, Ryan Polaski, and many others were told that many innocent people were being falsely arrested and/or convicted under fraudulent terms. They did nothing but join in the process to cover it up. And it didn't help to make complaints against all involved and their attorneys, because the grievance panels and the Judicial Review Council continuously covered it up.

What the state should buy is a dismiss, dismiss, dismiss stamp for the agency so that their fingers won't get tired from typing the word dismiss for their friends. Imagine how many innocent people are in jail under fraudulent convictions.

The photographs will show Sergeant Barton's hands folded while claiming a child is injured. Look at the mother leaning over the police car. If a child is injured, shouldn't the police be outside the car assisting?

And so I have this colored photographs, and if anyone wants to see the photographs or see my camera, you will see that. And this not only happened to me, the false arrest, they also broke into my son's house. They lied on him. He was at home minding his business. And when someone lied, because they, whenever they got mad at me, they attacked my children too.

And there's a lot of young kids, teenagers, that got false arrests against them, because

the Bristol police were carrying out their hateful crimes against people and a lot of our state. And we also had two FBI agents help in the lie. And it's well documented. There's one thing that I will do, and I learned that from Senator Coleman's teacher when I interned.

He said, Monica, if you're going to be out there in the community working, he said, make sure you learn to document. I also talked with the FBI, I trained with them, and just this Martin Luther King's Day, I talked to an FBI agent, and I said, you know, they keep calling me a liar saying I'm crazy. He says, Monica, there's a lie on one end, and there's a truth on the other end.

He said, I need you to get to the middle ground. He says, I understand what you're saying, he said, but they're getting away, because they keep saying mistake, and they're using their friendship. He said, I want you to look at deliberate. And when you find deliberate, he said, then I want you to find federal. And then I want you to call us.

And so as I talked, he said, put everything together, and that's what I'm taking this year to do. I haven't been here for the last seven years to the Capitol complaining. I've been trying to go to the agencies, but what they're doing is covering it up.

And because Bristol lied so much on me and used their badges and stuff, we've got judges on the bench and others who are using their gavels illegally to make it look like I'm crazy so no one would help.

So I just wanted to like talk about that bill, because it's very important. It's a good

bill, and Senator Coleman or (inaudible), I'm not doing anything to try to knock your bill down, but it's just, you know, we've got to take it a little bit further, especially when many people are complaining that police officers are using their badges illegally. Thank you.

SENATOR COLEMAN: You're talking about the eyewitness ID bill?

MONICA FORE: Yes. It's, I understand it's the photograph, but I did go, I worked, I was in college. I did criminal justice. And I understand about the procedures, but what happens if you have police officers working together from a systematic approach saying put these photographs in your, if they can still taint the evidence because on the lab reports if you look and do research into it, the United States Department of Justice has a research project, and they talk about the trickledown effect.

And it talks about how officers work together, and they can do all this stuff to cover up with people and the crime. And you have lab technicians who are arrested, because they fixed the evidence. So, you know, what language is in there that if an officer gets caught or someone gets caught, you know, tainting the evidence.

I mean, a lot of times the evidence in the evidence room gets stolen by a police officer, so there's some language that needs to be in there to say that when officers or someone in the police department or in the judicial system, you know, tampers with the evidence, you know, what's going to happen to them?

Because I know, understand that everybody is trying to work across this country to, you know, bring change, but there's got to be something that says, you know, because, you know, just like in the public, we sell stories, we lie, we do these things, you have that in the government system too.

SENATOR COLEMAN: Yeah, I understand and appreciate your point.

MONICA FORE: Thank you.

SENATOR COLEMAN: Are there other questions for Ms. Fore?

MONICA FORE: Thank you.

SENATOR COLEMAN: No other questions. As usual, thank you for your patience and your willingness to address us. Henry Milner.

HENRY MILNER: How are you doing, Senator Coleman -- HB 5501

SENATOR COLEMAN: I'm doing well. How are you?

HENRY MILNER: -- Senator Kissel and the rest of the body? I'm doing fine. The past ten months or so, I was investigating, I'm Founder and CEO of True Foundation. I'm one of the original Create Change leadership teams whose bill passed in '05, June of '05, alternative to incarceration. And I did most of the investigative work.

One of the investigative parts of my duty was to go over to the state law library and get as much information as I could. When I got there, I found a performance audit that was done by a Kevin P. Johnston, who's over in the State Capitol, and Robert G. Jaekle. That

performance audit was so vast in information it covered everything that you're trying to do today.

5501, I read it. And, Senator Coleman, you know I've been calling for accountability in this state for quite some time now. And this audit gives you accountability. And I gave it to several Senators when I discovered it in '03. And to this day, the most important part of it is to hold each and every state agency, governmental agency accountable.

They found in their findings that the lack of accountability was why things were going on. There, when they looked for data, the data wasn't there. They wanted quarterly reports in each and every department so people would know what's being done and how it's being done.

I'm in favor for 5501, but it's lacking accountability in it. I heard one chief, he wants to take out a large portion of your bill. He doesn't want Legislature telling him what to do. The audit said somebody needs to tell them what to do, because they're falling short every time. And if you allow them to continue, we're going to be in a worse state. I found this audit in 2003.

Here it is 2012. And Jaekle's and Johnston's findings have not been implemented to the fullest. The monitoring is only being done one-sided. Jaekle and Johnston say not just, do not just monitor the individual, monitor the entities that are in place. And no one has done that yet. That's why you have a Monica Fore here today and others who came and spoke on previous hearings.

If you hold them accountable to every action that they do, and they have to answer to someone, I don't think this will go on. And because of the fact that it's not happening, now this performance audit covered, it covered from CSSD to DOC. And it has not been implemented yet.

You have the causes, the conditions, and the recommendations, and they're fairly sound recommendations from our auditors. I mean, you know, I gave it out. Must I give it to you again so you can overlook it again this year? Because I think this audit that was done by the state of Connecticut should be looked at again.

And it will alleviate all the problems that we're having throughout the state of Connecticut, because I've witnessed the police officers not taking statements. They refused to take her son's statement after they alleged he did, he committed a crime. And with nobody in place to oversee that, you have people on paper lying for one another throughout the state.

I have investigated this for the past ten months. And I know it to be true, because I sat in on most of the hearings that Monica Fore went to. When she went to the AG's office, I was there listening to them lie. I was in the courtroom in Bristol, I was in the courtroom in New Britain, and I watched them lie in court and get away with it, and that's not fair.

That wasn't fair to her. That wasn't fair to her family, what they put her through. And they put her through a lot. After she went and got her master's, she was an aide here. The FBI trained her. And then when she blew

the whistle on them, they called her a liar. I think I need to make copies of this audit so you all can go over it this year, because it answered the questions that we're here trying to answer today.

They did this in '03, and it was never implemented. You see how thick it is? The proposal that was passed in '03 was a half an inch thick, and it didn't have everything that it had in the audit. That would have alleviated a lot of the problems that we're having today. I watched, like I said the last time I gave testimony, I watched Officer Peter Lavery lose his life because it wasn't implemented.

The guy who killed him was an ex-CO, an ex-correction officer with a permit to carry a gun, and he shot that man to death. Now he's not here. And I gave this to Legislature. I gave this to Senator McDonald and Michael Lawlor when he was over Judiciary. And this could have been put in place way before Peter Lavery lost his life. It's just not fair. It's just not fair.

We're, I'm not blaming Legislature. I'm just trying to bring Legislature up on things that I have been investigating for the past nine years. After my bill that I helped construct passed, I took a hiatus, and I didn't come back to Legislature. But I felt the need to come back, because things that should have been implemented years ago are still questionable.

They're not there. And I want to know why. I mean, what is it that we have to do to get things implemented to hold people accountable in this state? They're getting away with murder, and they're doing heinous things on a

high level, sitting on the bench, prosecuting people, and they're lying.

And with this audit, there was a way to keep people contained from going above and beyond, because the ethics didn't, the code of conduct they don't care about, because they're running things. And that's what they'll say to us. This is my house. And what can you do when people are going above and beyond? There's nothing you can do. Your hands are tied.

And you're standing there, taking, you have to take the abuse, because it's their court. And it's not fair. Jaekle and Johnston came up with a plan to stop all this foolishness. I think it needs to be looked at again. And that's all I have to say, Senator.

SENATOR COLEMAN: Well, thank you, Henry, for your report.

HENRY MILNER: Yes, sir.

SENATOR COLEMAN: And are there any questions? Seeing none, thanks again.

HENRY MILNER: All right. Thanks a lot.

SENATOR COLEMAN: All right. Mr. Milner was the last person that was signed up to address the Committee today. We will offer an opportunity for anyone else in the audience who hasn't signed our list to come before the Committee. Actually, I don't see anyone else in the audience. Okay. So --

MONICA FORE: (Inaudible).

SENATOR COLEMAN: I suppose so.

MONICA FORE: Just quickly, I came yesterday to (inaudible). As I spoke on the 15th, February 15th and the 17th when the judges were there, I was asking to kind of like put an end to what was going on. And I was contacted by someone in CHRO, and they told me to put some things together, you know, go back over this and get the complaint together.

And I'm at the Grievance Committee, and what I just wanted to show was that yesterday I dropped off at your office, Senator Coleman, a letter to the Judiciary Committee regarding the statewide grievance procedure. I am making the proper complaints, but they're being dismissed, dismissed, dismissed. And so I talked to Attorney Michael Georgetti, because one of the answers from one of the attorneys was just blatant dishonesty.

They accused me of stealing the evidence from the case from the state records and everything, which Attorney Richard Blumenthal, all of them know I have, because I even have e-mails. I keep my e-mails and everything. And I was, had been working and talking with Richard Blumenthal about what was going on, also with Governor Rell's office and all of them as I gave you all the letters.

So I'm just, you know, I don't know what's the procedure, but I was told that there's no rebuttal, like when I went to challenge what the answer was. And they said there's no appeal process. There's something wrong with that, because that's this Constitution's civil rights violation. If my, I have an open pending case, and the evidences are stolen.

It's over here, over there, and then now they're saying they never had the evidence. Something is wrong with that, so the only,

when I talked to Michael Bowler, he e-mailed me back, which I can forward it to your office, and he says there's nothing they could do when I was talking about some of the other attorneys and how they were letting them go, and that's the final decision.

I said, how could it be the final decision? And as I'm watching and learning, you know, when I first started this, I had no clue about the law. You know, I just had to cry and just get on my knees and pray and say, God, show me how to do this. So as I'm, through the seven years, I had to go back and forth to a law library so I gained speed on what the law was. And I'm just watching how everything is a circular effect.

It's like you go over here, you make a complaint against attorneys and everyone. And then over here says, okay, if you help me out over here, I'll protect you over there. You go to CHRO, CH's officer is sitting in there. And it's like there's nothing to make anyone do what is right. So all of the complaints are being dismissed, and they know for a fact this stuff is true.

It is true that the person has been suspended, has been unregistered. I gave Judge Patti Pittman, she removed, marked my motion for civil contempt off. I went through the process of getting the FBI to ask them if they could step in to help me with my complaint. I was given a letter from Jane Dabrowski, and, because I told her, I'm like, you know, I'm having so much trouble trying to get my case through court.

And I asked if they could, if I could subpoena them to come testify. She gave me a letter, and I'm doing all that, but then now just to

cover it up, it's just messed up. It's just everywhere, you know. So I don't know what else to do. I mean, you know, they're telling me there's nothing they could do about this blatant story, but I'm going to put a rebuttal in.

Also I'll forward my answer that, I mean, my formal complaint to the Grievance Committee. Because they were just dismissing my case, I specifically labeled it as the attorneys. Oh, I asked for a hearing to show DVDs and depositions. I have not heard from any of that yet, so that's, the Judiciary Committee is here.

I know that your Committee is supposed to be like the highest as I'm being told over the whole courts and everything. If someone can see to this and, you know, I won't have to come here if the doors are not blocked. I won't have to drive you crazy, you know, keep putting stuff in here, because as I'm speaking to you just to show that I'm not being dishonest, I am giving you exhibits.

I'm giving the exhibits to say, hey, this is something that I'm, I'm really, you know, showing you. I can't get any more honest than to bring the photographs and bring the documents here and say, hey, can you please help?

So Senator Coleman, he's been listening, and, you know, I'm driving Jamar crazy, but I'm hoping this will end, that I won't have to keep coming here and taking up your time. Thank you.

SENATOR COLEMAN: I know, I think I heard you say that you have provided me a copy of that document.

MONICA FORE: I'll give you the actual color photographs of this.

SENATOR COLEMAN: Well, I was going to suggest you might want to just give the document to the staff, and they might disseminate it to other Members of the Committee.

MONICA FORE: Okay. I did.

SENATOR COLEMAN: Okay.

MONICA FORE: Okay. Thank you.

SENATOR COLEMAN: Thank you. As far as I'm aware, there are no other persons or members of the public who wish to address the Committee today. And that being the case, I will declare this public hearing closed. Thank you, Members and staff.

JOINT
STANDING
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HEARINGS

JUDICIARY
PART 11
3356 - 3690

2012

State of Connecticut
DIVISION OF CRIMINAL JUSTICE

Testimony of the Division of Criminal Justice
Joint Committee on Judiciary

March 16, 2012

In Support of:

S.B. No. 367: An Act Concerning Public Indecency in a Correctional Institution

H.B. No. 5501: An Act Concerning Eyewitness Identification Procedures

The Division of Criminal Justice respectfully recommends the Committee's JOINT FAVORABLE REPORT for S.B. No. 367, An Act Concerning Public Indecency in a Correctional Institution, and H.B. No. 5501, An Act Concerning Eyewitness Identification Procedures.

The Division of Criminal Justice assisted the Department of Correction (DOC) in drafting the language of S.B. No. 367. The bill establishes the crime of Public Indecency in a Correctional Institution, providing an appropriate means for addressing legitimate concerns of the DOC and its employees.

H.B. No. 5501, An Act Concerning Eyewitness Identification Procedures, is the end product of a process that began last year with the passage of Public Act 11-252, An Act Concerning Eyewitness Identification. Among other provisions the act established the task force that drafted H.B. No. 5501. The Division of Criminal Justice participated in the task force and wishes to extend its gratitude to the other members, including Justice David M. Borden as Chair, for their thoughtful consideration and deliberation of the issues presented.

H.B. No. 5501 establishes reasonable guidelines and procedures governing the eyewitness identification procedures used by Connecticut law enforcement in the course of criminal investigations The bill is an effort to have these procedures reflect "best practices" and the what the task force learned through its review of the scientific studies of eyewitness identification issues. It is important to note that the bill places the primary responsibility for establishing best practices with the Police Officer Standards and Training Council (POST) in the Department of Emergency Services and Public Protection. This is consistent with the Division's longstanding position that law enforcement professionals should have primary responsibility for determining what constitutes best practices with regard to law enforcement practices and procedures.

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

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March 16, 2012

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

HB 5501

Re: Raised Bill No. 5011, An Act Concerning Eyewitness Identification

Dear Chairmen and Committee Members:

My name is Lisa J. Steele. I was appointed by the Connecticut Criminal Defense Lawyers Association (CCDLA) to be a member of the Judiciary Committee's Eyewitness Identification Task Force.

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 counsel to defendants 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 CCDLA.

CCDLA is a statewide organization of 350 lawyers dedicated to defending people accused of criminal offenses. Founded in 1988, we 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. 5011, *An Act Concerning Eyewitness Identification.* This bill amends Public Act 11-252, passed unanimously last year, to establish a clear preference for double-blind identification procedures, and allows blinded procedures where double-blind procedures are not feasible. It also establishes a preference for sequential procedures, where the witness is shown images of the suspect and of other persons one at a time, rather than being able to look at all of the images simultaneously and pick the person who looks most like the culprit.

The bill is based on the testimony of numerous witnesses before the Task Force including Dr. Well and Dr. Dysart (two of the leading researchers in this field); as well as testimony from Police Chief Lovello of the Darien Police Department about his department's experience and procedures; and testimony from a deputy police chief from

Wellesley (a suburb of Boston), and a senior prosecutor from Middlesex County about how similar procedures have been implemented in Massachusetts with great success.

A requirement that law enforcement adopt procedures already in use in states like Massachusetts, New Jersey, and North Carolina, in some local law enforcement agencies like those in Dallas and Austin, Texas, will decrease the likelihood that an identification procedure will result in a wrongful arrest and conviction. 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". The Innocence Project notes that eyewitness identification mistakes were found in 75% of 289 DNA exoneration cases including Calvin Tillman's case here in Connecticut. Unfortunately, DNA is found in a minority, perhaps 10%, of criminal 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 Miller 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.

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). Many of Judge Gaulkin's recommendations were subsequently adopted by the New Jersey Supreme Court in *State v. Henderson*, 208

N.J. 208, 27 A.3d 872 (2011) Links to the *Henderson* decision, Special Master's Report and the OLR Research Report on the *Henderson* decision can be found on the Task Force website, http://www.cga.ct.gov/jud/eyewitness/taskforce.asp.

Judge Gaulkin reviewed the research in this area and concluded that "Of all the substantive uses of 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 research and training on use-of-force by police officers and reconstruction of officer-involved shooting incidents. See in Dewar & Olson, HUMAN FACTORS IN TRAFFIC SAFETY (2d Ed. 2007); 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 might disagree or argue that the science is not yet definitive, Justice Borden repeatedly asked the members of the Task Force to seek out contrary opinions so their testimony could be heard. If there are remaining skeptics, 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 our own Task Force, as well as 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.

Opponents of this bill may again 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. Many of the Department of Justice's reforms were adopted in Public Act 11-252, nearly twelve years later.

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). This bill recommends that the Police Officer Standards and Training Council (POST) and the Division of State Police create uniform mandatory guidelines and procedures, standardized forms, and appropriate training. This is vitally important. Investigative procedure should not depend on where a crime occurs – uniform procedures incorporating well-settled science will best serve Connecticut's citizens.

A. 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 the Task Force heard, identification procedures in Connecticut "virtually always" involve the use of photographs. A "live" lineup is an extreme rarity in Connecticut. A double-blind procedure would briefly involve a second officer to show the images to the witness and record their choice.

Where a double-blind procedure is not feasible, the bill suggest a "blinded" procedure. A police officer who is unavoidably aware of the identity of the suspect conducts the procedure in a way in which he or she cannot tell what images the witness is looking at and thus cannot provide conscious or subconscious feedback on the witness' choice. 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 intent of this amendment to P.A. 11-252 is to clarify a preference for double-blind identification procedures and to clearly permit the use of "blinded" procedures where double-blind is not feasible.

There is no dispute among researchers about the efficacy of double-blind identification procedures as described in P.A. 11-252 and in this bill. To the extent that "blinded" procedures may be necessary in unusual situations, they should be permitted.

B. Sequential Procedures

In a traditional identification procedure, the witness is shown 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 that 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 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. Scientific research supports the use of sequential procedures in preference to simultaneous ones. To the extent that the Supreme Court debated the merits of sequential procedures in *State v. Marquez*, 291 Conn. 122 (2009), subsequent research, as described in testimony to the Task Force, clearly shows that sequential procedures do work in the real world

Sequential procedures have been adopted by numerous law enforcement agencies across the country and should be adopted 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 #5011.

Respectfully submitted,

Lisa J. Steele, Esq.

TESTIMONY OF JUSTICE DAVID M. BORDEN ON RAISED BILL NO. 5501 AN ACT CONCERNING EYEWITNESS IDENTIFICATION PROCEDURES

MARCH 16, 2012

COMMITTEE ON THE JUDICIARY

My name is David M. Borden, and I am a Retired Justice of the Connecticut Supreme Court, now serving as a Judge Trial Referee on the State Appellate Court. I am the Chair of the Eyewitness Identification Task Force, which was created by the 2011 General Assembly. I appear here in support of Raised Bill No. 5501, An Act Concerning Eyewitness Identification Procedures, which bill incorporates the unanimous recommendations of the Eyewitness Identification Task Force.

First, some brief background. The Task Force was created because the more than 270 DNA exonerations in the past 15 years made clear that our currently employed eyewitness identification procedures were producing an unacceptably high rate of misidentifications. We know that because more than 75% of those exonerations involved positive eyewitness identifications. In addition, the scientific community had, on the basis of thousands of experiments and hundreds of peer-reviewed papers, concluded that there were two best practices that could significantly reduce the incidence of those misidentifications.

Those two best practices were, first, that the identification procedure be conducted in a double-blind way--that is, that the officer administering the procedure not know who in the identification array (the group of photographs shown to the eyewitness) the suspect was. This was in line with established scientific principles that, in any scientific test, the person administering the test not know the desired outcome, so that

he or she could not leak that information in any way to the person being tested or influence the response of the person being tested.

The second best practice was that the photos be shown sequentially--that is, one at time--rather than simultaneously, that is, all at once in a group. This was to reduce the incidence of what the social scientists called the "relative judgment process," by which a person looking at the photo array tended to pick out the photo that most resembled the perpetrator of the crime, relative to the other photos in the array, rather than the photo that most resembled his or her memory of the perpetrator. Thus, in an photo array in which the actual perpetrator was not present, the person making the identification tended to select someone who most resembled the perpetrator relative to the other photos in the array.

The legislation that you produced in 2011 had two parts. The first part mandated that, as of January 1, 2012, all police departments use double blind procedures where practicable. The second part established the Eyewitness Identification Task Force, to study the issue of sequential versus simultaneous procedures At that point in time, although there was wealth of laboratory science supporting the use of the sequential method, there was no authoritative field study on the issue. The 2011 legislation required the Task Force to report back to you by April 1, 2012.

The Task Force was specifically designed to include all the relevant stakeholders. In addition to me as Chair, it consists of the following members: the co-chairs of this committee--Rep. Fox and Sen. Coleman; the two ranking members--Rep. Hetherington and Sen. Kissel; Dr. David Cameron, of Yale University; Senior Ass't State's Attorney Richard Colangelo; the state Victim's Advocate, Michelle Cruz; Dr.

John DeCarlo, of the University of New Haven; Deborah DelPrete Sullivan, of the Office of the Chief Public Defender; Attorney Rober Farr; Thomas Flaherty, Executive Director of the Police Officer Standards & Training Council (POST), Karen Goodrow, Director of the Connecticut Innocence Project; LaReese Harvey, of the Better Way Foundation; Chief State's Attorney Kevin Kane; Duane Lovello, the Chief of Police of Darien; Lt. Clayton Brown, of the State Police Training Academy (SPTA); Bradley Saxton, Dean of Quinnipiac University School of Law; Lisa Steele, of the Ct. Criminal Defense Lawyers Association; and Beau Thurnauer, Deputy Chief of the East Hartford Police Department. It was ably staffed, pro bono, by Sherry Haller and Ron Shack, of the Justice Education Center, and by Alex Tsarkov and Deborah Blanchard of this committee's staff. After meeting biweekly from November through January, hearing testimony from the most eminent scientists in the field, as well as from law enforcement officials, including from Chief Lovello, we issued our report on February 2, 2012, two months early, and our recommendations are unanimous. I also add that, in addition to considering the scientific studies, we were fortunate that, just prior to our first meeting on September 21, the results of a widespread field study, sponsored by the American Judicature Society, on the issue of sequential versus simultaneous procedures, was published, and the results of that study fully supported the science that had preceded it. And we were fortunate to hear personally from Dr. Gary Wells, of Iowa State University, and from Dr. Jennifer Dysart, of John Jay College of Criminal Justice, who were two of the persons responsible for that study and who are among the nation's leading scientists on the entire issue of eyewitness identification.

Let me now turn briefly to those recommendations, which are embodied in the bill

before you. First, the bill modifies the requirement that all procedures be double blind where practicable, by adding the option of it being what's called "blind,"' rather than double blind. This option, which is supported by the scientists and by law enforcement personnel elsewhere, simply means that the office administering the procedure does not know which photograph the eyewitness is viewing during the procedure, and so is not in a position to leak the information about whether the person chose the suspect or not. The most common method in this regard is what is known as the folder shuffle method, whereby each photo is placed in a folder, and the folders are then presented to the witness to view, without the officer knowing which of the photos the witness is viewing.

Second, the bill requires that all identification procedures be sequential, and that they be accompanied by a set of appropriate instructions. The purpose of these instructions is to ensure the integrity of the identification procedure.

Third, the bill requires that there be a written record of the identification procedure that includes all of the necessary information about it, again, to ensure the integrity of the procedure and to be sure that there is a reliable record of how the procedure was conducted. In this regard, however, there is one part of the bill as currently drafted that I suggest be amended. Section 15 (D) as drafted requires that there be a written record of the "order in which the photographs or persons were presented to the eyewitness." This is too broad, because where the folder shuffle method is used the office will not know, and cannot know, the order in which the witness viewed the photos. I suggest, therefore, that this section be eliminated and that what must be recorded in this regard be left to the guidelines that the bill contemplates will be established by POST and SPTA.

This brings me to the recommendation, incorporated by the bill, that both POST and SPTA jointly develop and promulgate uniform mandatory policies and appropriate guidelines, based on best practices, to be followed by all municipal and state law enforcement agencies. This is a key component of our recommendations and the bill, because it is imperative that all law enforcement agencies follow the same procedures and protocols, and that they be based on best practices, as those may be disclosed over time. Finally, the bill would continue the Task Force in existence for two years, during which it would aid both POST and SPTA in the establishment of those policies and guidelines, gather statistics regarding how the new procedures are working, and oversee the implementation of the new procedures. We contemplate that there will of necessity be major law enforcement training programs established by POST and SPTA, and that the Task Force will be available to help in that effort.

In conclusion, with the one suggested amendment that I have mentioned, I urge the committee to report the bill favorably. It will constitute a major step forward in the administration of criminal justice in this state.

CONNECTICUT INNOCENCE PROJECT

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KAREN A. GOODROW, ESQ
DIRECTOR

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

Raised Bill No. 5501
An Act Concerning Eyewitness Identification Procedures

Judiciary Committee Public Hearing - March 16, 2012

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. 5501, An Act Concerning Eyewitness Identification Procedures*** which would mandate sequential and double blind administration of photographic arrays and live lineups, except that when double blind is not practical, the photo lineup shall be conducted by the use of a folder shuffle method, computer program or other comparable method. The **Raised Bill** embodies the legislative recommendations of the ***Eyewitness Identification Task Force***, and also provides for training and other policy reforms to insure the reliability of identification procedures.

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 double blind administration "*when practicable*", and an alternative, when not practicable. Also, the Raised Bill requires the use of sequential viewing of photographs or persons, rather than simultaneous. The purpose of Raised Bill No. 5501 is to insure that law enforcement consistently 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" or 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.

The new bill embodies the unanimous recommendations of the ***Report of the Connecticut Eyewitness Identification Task Force.*** Task Force members consisted of all of the criminal justice stake-holders, including the Office of the Chief State's Attorney, the Office of Chief Public Defender, the Victim's Advocate, the judiciary, law enforcement and the Connecticut Innocence Project. The Task Force met on numerous occasions, heard from various experts in the field, reviewed relevant information from the field, and assessed the concerns of all of its members. The result of this carefully deliberative process was the recommendations contained in the new bill. All Task Force members shared the common goal of protecting the innocent through improvements in the eye-witness identification process.

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 largely the result of misidentification. In January, 2008, through the same DNA technology, the real perpetrator was identified and arrested.

To date, there have been 289 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 (or blind) administration.

Sequential Photo Arrays: Photos (or individuals in live lineups) are presented to the witness one at a time, rather than simultaneously. Research demonstrates that sequential photo lineups 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 or Blind Procedure: When practicable, the person administering the photo (or individual) lineup does not know who the suspect is, and is not in a position to unintentionally influence the witness's selection. In situations where double blind administration is impracticable, the use of a blind procedure can also insure that the witness is not unintentionally influenced. Blind administration can be achieved through the shuffle file method, computer program, or some comparable method. 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, or cannot observe when the witness is viewing 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 adoption of the following additional best practices, as set forth in **Raised Bill No. 5501**:

1. **Uniform Policies and Guidelines**: POST and Connecticut State Police shall promulgate uniform mandatory policies and appropriate guidelines for conducting eyewitness identification procedures.

2. **Specific Instructions to the Eyewitness**: The witness shall be told that he will be asked to view an array of photographs or group of persons, one at a time; it is as important to exclude an innocent person as it is to identify the perpetrator; the person in the photo array/line-up may not look the same as on the date of the offense due to changes; the perpetrator may or may not be in the array or lineup; the eyewitness should not feel compelled to make an identification; the eyewitness should take as much time as needed in making a decision; and that the police will continue to investigate, regardless of whether the witness makes an identification. Additional instructions may be promulgated by POST/CSPT guidelines and policies.

3. **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

4. **Non-suspect fillers:** Photos of individuals in the photo line-up, or live individuals in the live line-up, who are not the suspect are called "fillers". These photos/individuals should be chosen to minimize suggestiveness that might point toward the suspect. In other words, the photos/individuals of non-suspects should generally be chosen to resemble the witness's description of the perpetrator. When multiple line-ups are shown to a single witness, the fillers should be different from the ones previously used.

5. **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.

6. **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.

7. **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.

8. **Continuation of the Eyewitness Identification Task Force**: The Task Force recommends that it continue in existence to assist POST, CSPT and all criminal justice stake-holders in the training, development and evaluation of best practices

March 16, 2012

Joint Committee on Judiciary
Rm 2500, Legislative Office Building
Hartford, CT 06106

MONICA FORE
TESTIMONY AND PHOTOGRAPHS

RE: H.B. NO. 5501: AN ACT CONCERNING EYEWITNESS IDENTIFICATION PROCEDURES
"Eyewitness" means a person who observes another person at or near the scene of an offense.

- BEST PRACTICE- ...Develop uniform mandatory policies and appropriate guidelines for conducting of eyewitnesses identification procedures that shall be based on best practices and be followed by all municipal and state law enforcement agencies.

Dear Legislators,

How does the State of Connecticut apply "best practices" in eyewitness cases when it involves acts of "racial profiling?" How does "best practices" apply to police departments who have "racist" officers on its force? How much weight does an eyewitness have when a police department has a "Nigger Free Radio Station? Following are photographs of Bristol Police Officers mingling with white individuals conspiring together to make a false arrest on me for "Breach of Peace" for being belligerent and "Risk of Injury" for beating up my grandchild. Does any of these photographs show a child injured? Does it show an individual being belligerent with an officer? These photographs were taken on the day the Bristol Police falsified a criminal case against me for speaking out against them. Several people including some city employees can confirm my whereabouts on August 3, 2009 when the police falsely arrested me. I was in city hall talking to people in the finance department and the mayor's assistant when "racist" officers claimed I committed the act. More importantly, Rev. Daniel R. Collins can confirm that ":we" walked together to the police department from city hall. The eyewitnesses are Michael Drouin, Stashia Luddy, her brother and Sgt. Barton and other officers who were mad because we were going up against them for false reports, the radio station and issues of them attacking me at my home. They lied about an incident with a car seat. Stashia gave them evidence from my home regarding our "civil rights" work so they could make the false arrest. She was ordered by Judge Levine to give me the baby on a certain date. She told everyone that she would lie. The police department and city officials had the courts information but plotted with Stashia to deny the court order. Can you imagine police officers adopting a uniform eyewitness code to carry out their hateful acts? What penalty language does the bill have regarding police officers and eyewitnesses who lie on innocent people?

Sadly, it wasn't just the Bristol Police Department who played a positive role in the racial profiling. The Office of the Chief States Attorney and the Attorney Generals Office were well informed of the illegal acts. John Whalen, Scott Murphy, Detective Sarant Brien Preleski and many others were told that many innocent people were being falsely arrested and/or convicted under fraudulent terms. They did nothing but join in the process to cover it up. And it didn't help to make complaints against all involved and their attorneys because the grievance panels and Judicial Review Council continuously covered it up. What the state should buy is a DISMISS, DISMISS, DISMISS Stamp for the agencies so that their fingers won't get tired from typing the word dismiss for their friends. Imagine how many innocent people are in jail under fraudulent convictions! The

photographs will show Sgt. Barton's hands folded while claiming a child is injured. Look at the mother leaning over into the police car. If a child is injured shouldn't the police be outside the car assisting?

Monica Fore
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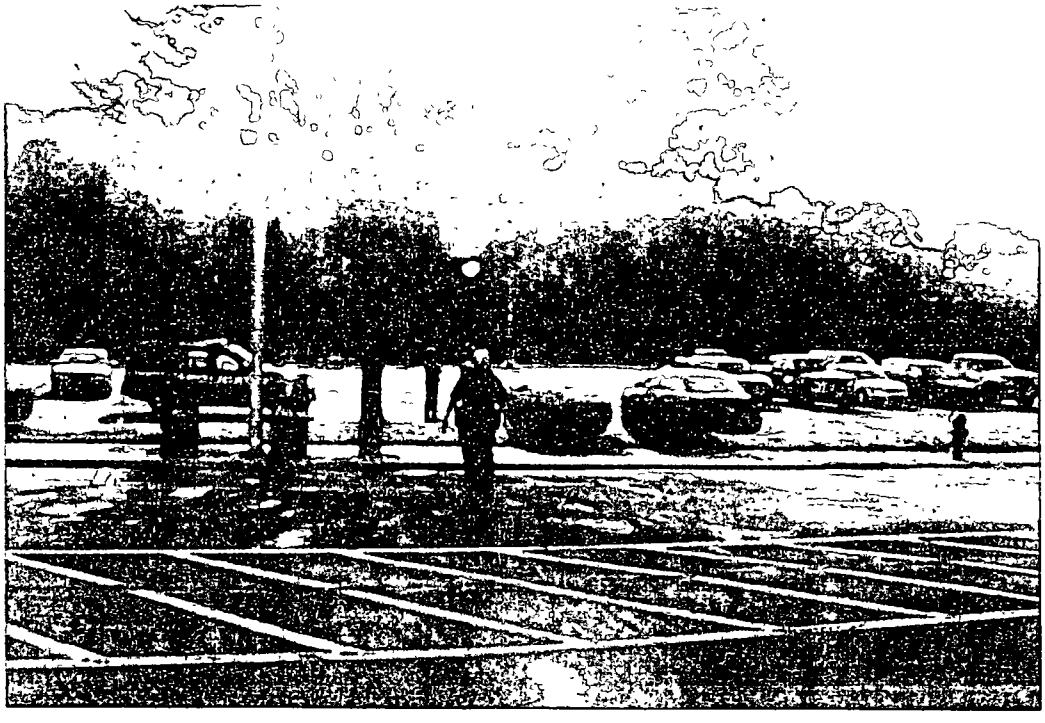


HB 5501

March 15, 2012

Joint Committee on Judiciary
Rm 2500, Legislative Office Building
Hartford, CT 06105

RE: STATEWIDE GRIEVANCE COMMITEE - RULES AND PROCEDURES
In the case of Fore v. Johnson #12-0101 and Fore v. Margulies #12-0102

Dear Judiciary Committee:

I am asking for the committees intervention into my complaints filed with the Statewide Grievance Committee as they pertain to Fore v. Johnson and Fore v. Margulies due to the fact that I just recieved Attorney Johnson's response to my complaint. I am very concerned by her answers due to the fact that she informs the panel in her no. 9. answer that "Respondent has no records belonging to Ms. Fore in her possession. Records referred to as 'state records' are records, that, on information and belief, Ms. Fore absconded with when she separated from her former employer, Tunxis Community College. Undersigned never took possession of said state records."

I ask the judiciary committee to intervene due to the fact that I just spoke with Attorney Michael A. Georgetti, New Haven J.D. Grievance Panel For The Towns of Bethany, New Haven, & Woodbridge. According to Attorney Georgetti, he told me that I could rebut Attorney Johnson's answer but that it is not in the rules. This is troubling due to the fact that it violates my right to due process and equal protection of the laws. This is what happened before with my complaints. Attorney Johnson and Attorney Margulies were dishonest in their statements as well as Attorney Quinn. Both attorneys were cleared for "no probable cause." However, the states records clearly revealed that Attorney Johnson was suspended by the Statewide Grievance Committee and not registered. Attorney Johnson lied about me stealing state records. She also said she never received any state records of which she contradicts herself in three of her statements to the panel. This is perjury as this is supposed to be a judicial panel set up by the State of Connecticut.

Of particular concern is the fact that Attorney Johnson and Attorney Margulies are using their influence as attorneys to lie to their colleagues to get away with their misconduct. I am not an attorney nor do I work in their field. This leaves me with a disadvantage. More importantly, because I am standing up and defending myself against judicial abuse, I am being retaliated against by government officials and private individuals to have all of my complaints dismissed and/or tampered with.

On Wednesday, March 14, 2012, I appeared before the judiciary committee to testify in opposition to H.B. No. 5427 - An Act Concerning Notice to The Attorney General of Data Security Breaches Involving The Disclosure of Personal Information. I provided the committee with written testimony and exhibits. The exhibits contained letters from Attorney Richard Blumenthal, Governor Rell's Office, John Neumon from the Attorney General's Office, etc. I also testified on March 7, 2012 regarding the issue with racial profiling. I provided written testimony and exhibits to show the committee that government officials are being dishonest in their investigations.

As a citizen of the United States and resident of the State of Connecticut, I am concerned that there is no rebuttal procedure nor appeal process in the grievance procedure against attorneys. This violates my state and federal constitution rights of due process and equal protection of the law. Attorney Johnson has blatantly lied to the panel over and over again. This is a very serious matter. How can the panel conduct a fair and just hearing if it does not have all of the facts? How can an individual defend against an attorney's lie if they have no right to file a rebuttal to the attorney's answer? This is unlawful and out of context with the constitution. My civil rights are seriously being violated. Additionally, in my complaint, because of the injustice that happened with Attorney Quinn, I made sure that I asked for a hearing so that I could show the Tunxis Deposition Tape to the Panel so that they could see and hear what really took place in that deposition and have knowledge as to the relationship between all parties. As of today, my request has not been honored. Because Attorney Johnson was dishonest with me and did not file my papers in court as she was hired to do, Attorney Margulies went to court claiming that I refused to be deposed. The judge granted the deposition and ordered me to bring the documents to the hearing with me. What you will see on dvd is that Attorney Johnson did not bring my documents to the hearing as court ordered. You will also hear me complaining about that. More importantly, Attorney Johnson lied to everyone stating that I said that she would "Kill" me. At no time did I state that. What I said was that my life is in jeopardy by her actions. This is true. Because Attorney Johnson is being dishonest and conspiring with the defendants and not obeying the courts order, I could be held in contempt. This does jeopardize my life in that under the law I could be fined and/or jailed for civil and/or criminal contempt. This is life threatening in many ways for me as I also have a disabled son (Autism, asthma, etc) at home who depends on me for his care. If I am in jail and he goes into crisis because something happens to his mother, he could have a medical attack and die. It should be noted that he had a nervous breakdown because of the Bristol incident. It is well documented.

I am in serious need of the committees help as this injustice is nonstop. I ask that the committee please help me and my family get the justice we deserve.

At lastly, Attorney Johnson was not registered and was suspended by the Statewide Grievance Committee. Our judicial system is supposed to be honest. If the Statewide Grievance Committee placed the suspension on Attorney Johnson and knows that she was unregistered and that under its rules that is considered misconduct, then I shouldn't have to fight as hard as I am to get justice as honest government employees would automatically say this is unacceptable for an attorney working in our state. And to add lying to the factor should definitely be terms for disbarment.

Sincerely,
Monica Fore
583 Prospect Avenue, Unit 24
West Hartford, CT 06105
860-206-1440

*This letter serves as notice of constitutional and civil rights violation.

STATE OF CONNECTICUT
JUDICIAL BRANCH

NEW HAVEN J.D. GRIEVANCE PANEL
FOR THE TOWNS OF BETHANY,
NEW HAVEN & WOODBRIDGE
Michael A. Georgetti, *Grievance Counsel*

67 Russ Street
Hartford, CT 06106
(860) 549-4451

March 9, 2012

Monica Fore
583 Prospect Avenue, Unit 24
West Hartford, CT 06105

Re: Grievance Complaint # 12-0101, Fore vs. Johnson

Dear Ms. Fore:

Enclosed please find the written response of Attorney Johnson to your grievance complaint. The panel will consider the complaint at a meeting in the near future. Shortly thereafter, a decision will be issued.

Very truly yours,

Michael A. Georgetti
Grievance Counsel
MAG/rc

Enc

State of Connecticut, Judicial Branch
Statewide Grievance Committee
FORE v. JOHNSON #12-0101

March 5, 2012

Respondent's Reply

1. Reference is made to the Petition and Reply in Grievance #11-0779, Fore v. Johnson. The Reply thereto is incorporated herein by reference as if more fully stated herein. Respondent denies each and every allegation, including duplicated claims in paragraph 7 of Petitioner's Complaint. Petitioner's claims are redundant, save the "conspiracy "claim, which the respondent denies in its entirety.
2. Respondent avers that Petitioner sabotaged defendant Tunxis Community College's attempts to exercise its right to depose her by her refusal to cooperate, ostensibly, because the deposition violated Petitioner's constitutional rights (a claim with which the Respondent disagrees.) During the Petitioner's deposition on or about September 22, 2011, the Petitioner claimed that she felt threatened, whereupon the Respondent, as counsel for the Petitioner, discontinued the deposition (which was video recorded), in an abundance of caution and due to the escalation of events in the room.
3. Respondent avers that Petitioner acted against her interests by failing and refusing to fund the costs of her litigation, feigning a belief and conviction that the State of Connecticut would, could and should fund her lawsuit by covering the costs of deposing Plaintiff's witnesses (a claim with which the respondent disagrees.).
4. Respondent avers that Petitioner's knowing, voluntary and willing publishing of statements to numerous federal, state, and local officials claiming the State of Connecticut, its employees and private individuals are conspiring against her to deprive her of her constitutional rights and murder her, and of the alleged commission of crimes against her person, are of record.
5. Respondent took deliberate steps to try to safeguard Ms. Fore's litigation prior to her withdrawal. To wit, she withdrew a prior withdrawal petition so as to continue representation long enough to achieve the modification of the scheduling order in Fore v. Tunxis (to enable the Petitioner additional time to find another attorney). As the Respondent was working to achieve said end, the Respondent was making claims of conspiracy at regular intervals (claims with which the respondent disagrees.)
6. The Petitioner's statements and deeds are difficult to analyze. First, she demanded the Respondent's Withdrawal; then, bemoaned the New Britain Superior Court's granting of the Motion to Withdrawal claiming that the Motion Should have been denied. At the same time, Petitioner published statements claiming that the Respondent wanted to "kill her". The Petitioner's statements in open court claiming that the court's granting of the Motion to withdraw is "criminal" are of record.
7. Another example is the Petitioner's recent request for a "Linked In Connection" sent through the Linked In network on the internet from the Petitioner to the Respondent. Said request is confounding since the Respondent has asked the Petitioner as of on or about October, 2011 to not contact her directly.
8. After the institution of the first of three (3) filings with the Statewide Grievance Committee against the Respondent, it became necessary that there be no contact between the Respondent and the complainaint, as the Complainaint made written claims to the Connecticut State's Attorney that the Respondent had placed the Petitioner's "life in danger." (Which the Respondent denies.) Therefore, Respondent delivered two (2) boxes of discovery to the Hartford Panel Grievance Counsel for Ms. Fore's retrieval as a neutral location from which the Petitioner could retrieve them in order to avoid contact with the Petitioner.
9. Respondent has no records belonging to Ms. Fore in her possession. Records referred to as "state records" are records that, on information and belief, Ms. Fore absconded with when she separated from her former employer, Tunxis Community College. Undersigned never took possession of said state records.
10. In response to the Complainant's request as Plainitiff, pro se in *Fore v. Tunxis*, the Assistant Attorney General defending Tunxis Community College caused to be delivered to the Complainant two (2) boxes of "discovery" material. Subsequently, after the Respondent began to represent the Complainant as Plaintiff's Counsel in said lawsuit, the Respondent took possession of, two boxes of discovery material from the Complainant in late 2010.
11. The balance of the petitioner's documents had been previously delivered to petitioner in hand in Court on or about September 25, 2011. Respondent presently has no other papers belonging to the Petitioner.
12. Respondent asks the panel to take administrative notice of the previous claims that the Petitioner has made against others concerning the possession of records. See, Fore v. Pittman, Marguiles, Flynn and Holden.
13. Respondent would respectfully comply with any request for information or documentation that the Panel requests, and defers production of numerous email messages, letters and other material until requested, in order to defray the cost of this response.

T. Jessica Johnson, Esq.
246 Oxford Street
Hartford, CT 06105
860.578.8478

HB 5501

March 5, 2012

Joint Committee on Judiciary
Room 2500, Legislative Office Building
Hartford, CT 06106

CONSTITUTION NOTICE OF VIOLATION
As To
Attorney Scott J. Murphy (Juris No. 400297)
Executive Director of Judicial Review Council; Former State Attorney at
New Britain Superior Court

Pursuant to the First, Fourth, Sixth, Eighth and Fourteenth Amendment, the Plaintiff, Monica Fore, does hereby inform the Court and other government officials of Color of Law violations by the Judicial Review Council Executive Director Scott Murphy. These violations occurring in his current position as Executive Director at the Judicial Review Council and former position as State Attorney at the New Britain Superior Court, located at 20 Franklin Square, New Britain, CT. 06051.

The Plaintiff informs the Court that ALL investigations being conducted by the State of Connecticut in regards to the complaints made by Monica Fore and in the case of Fore v. Tunxis Community College are **TAINTED** and denies the Plaintiff of her fundamental rights of free speech, due process and equal protection of the law. As such, the State of Connecticut is not in a position to remedy the situations at hand as they pertain to Monica Fore and her family. The acts of Attorney Scott Murphy have jeopardized all pending investigations and/or reviews. Attorney Murphy was a participant in the actions of the City of Bristol Police Department and Code Enforcement Team. Under his authority, these city law enforcement officers were able to carry out their misconduct. Attorney Murphy was made aware of these incidents including the "Nigger Free Radio Station and other acts of racism, bigotry, hatred, illegal and unlawful acts. He "failed to keep citizens from harm." As such there are some innocent people who have been arrested and/or convicted, and some who have been innocently evicted from their homes. His current position as Executive Director of the Judicial Review Council seriously injures any and all investigations as his position allows him to taint the minds of the members of the committee. As such, he is responsible for investigations of our complaints. If he failed to find harm or injustice in Bristol as the state attorney which was headed under the Office of the Chief State Attorney, does anyone honestly think he is going to incriminate himself now and say it did happen? He's not looking for any evidence in the Plaintiff's case or any other case that involves Bristol as he knows that if he should tell the truth it would injure him and his position.

According to the Office of Governmental Accountability – Judicial Review Council website, and under the heading, About Us – Statutory Authorization For And Compensation Of The Judicial Review Council, "*The judicial Review Council was established in 1978 and is presently governed by Chapter 872a, sections 51-51g through 51-51u of the Connecticut General Statutes. Those provision apply to judges of the Superior Court, including senior judges and judge trial referees, judges of the*

Appellate Court, justices of the Supreme Court, workers' compensation commissioners, and family support magistrates.

The Council is composed of (1) three judges of the Superior Court who are not also judges of the Supreme Court, (2) three attorneys at law admitted to practice in this state, (3) six persons who are not judges or attorneys at law, and (4) thirteen alternate members as follows: (A) two judges of the Superior Court who are not also judges of the Supreme Court, (B) two attorneys at law admitted to practice in this state, (C) three person who are not judges or attorneys at law, (D) three compensation commissioners, and (E) three family support magistrates. All members are appointed by the Governor and approved by the General Assembly and serve without compensation.

The Council employs an Executive Director and an Executive Secretary, both of whom are compensated. The Executive Director investigates complaints filed with the Council and presents evidence obtained pursuant to such investigations to the Council, which has authority to issue subpoenas for witnesses and documents in furtherance of investigations."

The Plaintiff hereby makes known to the Court and all other government officials, that there is a serious conflict of interest with Attorney Scott Murphy conducting the investigation of Judge Patty Pittman. Attorney Murphy is not capable of conducting a fair investigation as his acts in regards to issues in the City of Bristol prove that he cannot be impartial. Attorney Murphy was a major actor in the Plaintiff's complaints regarding the City of Bristol employees and private residents who sought to deprive the Plaintiff and her family of their constitutional and civil rights.

Attorney Murphy also acted with racism, bigotry, hatred, illegal and unlawful acts when he covered up many truths that would have vindicated the Plaintiff and her family. One particular situation was in the case of the State of Connecticut v. Pasquale Avallone. Attorney Murphy's office as well as the defendants attorney, Ralph Keene, were called into question by Judge Alexander when they refused to protect the rights of the Plaintiff and her family. Judge Alexander took it upon herself to go to Bristol to call the case to the docket to have the case returned back to the New Britain Superior Court so that it could be adjudicated. Since that time, Attorney Murphy has had a personal vendetta against the Plaintiff and failed to provide fairness when it came to the Plaintiff's other complaints.

The Plaintiff brings this notice due to the fact that on January 1, 2012, the City of Bristol came forward to confess (of their own free will and after being CLEARED by state and federal officials) to the constitutional and civil right injustices against its residents which includes the Plaintiff and her family.

THE PLAINTIFF,

Monica Fore
583 Prospect Avenue, Unit 24
West Hartford, CT 06105
860-206-1440

Sworn to this 5 day of March 2012

In Hartford, Ct.

Norma Y. Moriconi

NORMA Y. MORICONI
NOTARY PUBLIC
MY COMMISSION EXPIRES FEB. 28, 2015

LANDMARK CHANGE

Bristol Police Rebuild Image

Years Of Crisis, Scandal To Undo

By DON STACOM
dstacom@courant.com

BRISTOL — Like police officers everywhere, Lt. Brian Gould is accustomed to the rage of belligerent prisoners and ornery drunks.

But random abuse during a coffee break was never supposed to be part of his job.

In the midst of Bristol's notorious police scandals, Gould, an officer with plenty of commendations and a top-flight reputation, caught flak he didn't earn — like the time he was working back-to-back, eight-hour shifts and stopped at a convenience store to buy a Diet Coke.

"I was confronted by an agitated man. He proceeded to yell at me, telling me and everyone else in the store that I should be ashamed of myself and embarrassed to wear the BPD uniform. He continued to yell that he was disgusted with us, that the community had trusted us and we

BRISTOL, A4

IN THEIR WORDS

"Coming to work over the last several months has been a new experience. We're approaching crime and community relations in a different manner. It's really enjoyable to come to work and have those opportunities."

Capt. Thomas Grimaldi

More quotes, Pages A4, A5

003429

FROM PAGE ONE

"It's a great city. There are great people here, [but] we always had a cloud over our head. It was kind of embarrassing sometimes to tell people where you worked because of some of the things going on."

Det. Lt. Kevin Morrell

"We cannot just forget about the past. We need to learn from it. We now have the responsibility of earning respect and trust from our community."

Lt. Brian Gould

"When I stop in at businesses and talk with the business owner or workers, they're much more happy to see us, much more willing to provide us with information so we're able to help them."

Officer Scott Hayden

Bristol

Continued from Page A1

violated that trust," Gould recalled a few years later.

"I stood there thinking, 'All I wanted was a diet soda.' "

Gould's encounter wasn't uncommon. As with most of the 125 men and women of the city's police department, Gould was never part of the troubles that plagued the agency from 2005 through early 2011. Yet they all paid a price for a pattern of misconduct.

After each scandal surfaced, the department became the butt of new jokes. Some officers simply stopped talking about their jobs. One admitted that while in line at Starbucks, he felt like covering the word "Bristol" on his uniform patch.

But as 2012 begins, the police department has begun restoring its image — inside headquarters and out.

Under a widely respected new chief, police are campaigning to build community relations, step up visibility and reduce citizen complaints.

"I want everyone to come to work and be proud," says Chief Eric Osanitsch, who took control of the department amid a crisis last winter and was appointed to the top job several months later. "This department has always had the work ethic, it's always had great people. But it didn't have direction from the top."

A fresh command staff is promoting a theme of public service and respect, encouraging supervisors to reward officers for strong performance, calmly correct honest mistakes and quickly and consistently reprimand violators.

"Coming to work over the last several months has been a new experience," said newly promoted Capt. Thomas Grimaldi. "We're approaching crime and community relations in a different manner. It's really enjoyable to come to work and have those opportunities."

The public is noticing.

"It's a little early to tell, but we haven't had many complaints since [Osanitsch] took over," said Barbara Leslie Mangum, head of the city's NAACP branch. "He asked us to give him a little time. Well, so far so good."

City council member Ken Cockayne, who had stunned city hall when he publicly demanded the resignation of Osanitsch's predecessor, said there has been a culture change in the chief's office.

"You call about something now and you get action. You used to get excuses," Cockayne said. "And I hear it from people on the street; I see it with the officers. There's a whole new feeling in the department. It's like night and day."

Bad Times

For 5½ years, the department suffered through lazy or inept supervisors, an abusive captain with a drinking problem and a retired-on-the-job detective. One patrol officer was arrested after allegedly choking his pregnant girlfriend at Disney World, and another was charged with drunkenly smashing a cruiser into a utility pole.

Outside investigators failed to prove an accusation that off-duty officers laundered racist slurs over a department radio station, but yet came privately concluded it was true. An animal control officer drowned a wounded cat in a bucket. Civilian complaints of brutality rose, and morale among honest officers eroded.

A clique of politically popular officers appeared to violate rules with impunity, while most of the force adopted a code of "do your work, keep your head down and go home." Through it all, top commanders ignored, denied or covered up problem after problem.

Politicians followed suit: The city council simply pretended nothing was wrong. One mayor spent two years lamenting how a few city streets were cluttered with abandoned utility poles, but said not a word as his police department devolved into dysfunction. The police board, loaded with political appointees assigned to keep watch over the agency, argued instead about parking fines or barking dog complaints.

Supervisors privately described a tone of secretiveness and paranoia at headquarters in those years.

Commanders angrily demanded retribution each time bad news leaked out, yet rarely punished the men who routed the errors. While the Hartford and internal investigators were accused of disloyalty at staff meetings or frozen out of promotions. Even so, many officers, outraged by favoritism and mismanagement, risked their careers by discreetly telling the truth to politicians and the press.

Osanitsch, a captain at the time, and a network of mid-level managers quietly struggled to coach patrol officers to stay positive. Hard-working detectives and patrol officers who had no hand in any misconduct frequently bore the brunt of the public backlash.

"It's a great city. There are great people here, [but] we always had a cloud over our head," said Det. Lt. Kevin Morrell, a 24-year veteran who until recently was head of the traffic unit. "It was kind of embarrassing sometimes to tell people where you worked because of some of the things going on."

After the city finally relieved Chief John DiVenere of duty last February, Osanitsch began restoring

MORE, A4

Visit **courant.com/bristolpd** for previous coverage of the police department's problems.

FROM PAGE ONE

"This is my first chief change. It's almost comparable to a football team getting a brand-new coach. You have to be optimistic. It's a new regime; you have to hope for the best — which it's been."

Officer Chris Bird

"Everyone is entitled to have an 'oops' on the job, have an honest goof-up. I can defend you on that. With some of the things that happened here in the past, guys maybe hadn't done their jobs or had embarrassed themselves and added to that stigma of low morale. All of that seems to have changed."

Sgt. Russ Marcham

Image

Continued from Page A4

turing. He filled command slots with officers known for integrity, promoting Grimaldi to run the patrol division and making Morrell chief of detectives. Most of the old administration was already gone.

Osanitsch made the rounds of every division and every shift, assuring officers that with their help, the city of Bristol would soon have a respected force again. He promised even-handed treatment and a willingness to listen. Officers with alcohol troubles, family problems or financial crises will get help. Those who legitimately use force to make arrests would get management's support, he said, but any who bully citizens or deliberately violate rules would pay a price.

Newly promoted commanders revised policies to build accountability and are campaigning to earn the department state accreditation. They advise officers not to dwell on what went wrong before, but to consistently do solid work.

"We cannot just forget about the past, we need to learn from it," Gould said. "We now have the responsibility of earning respect and trust from our community."

Gould's assignment is to screen job applicants and then instill an ethical code that can last for their careers. Osanitsch views it as a key position.

"Everything is your people, everything," Osanitsch said. "We're more than willing to drop candidates if we see red flags being raised. When you hire in this field, you have the potential to have that person for 25 years or more. You have to be selective. I'd rather go short than hire for the sake of hiring."

At the same time, the agency is eager to rebuild. Its roster dwindled during the bad years, and is down more than 20 people from its peak. Despite the city's budget crisis, Osanitsch wants to bolster the patrol ranks to handle steadily increasing calls.

He is transferring one or two headquarters jobs to civilians to free up officers, and is studying how to change shift assignments to maximize staffing during peak demand. Even so, the department needs to bring in a significant number of recruits in the next year.

Osanitsch's immediate goals are to create a full-service traffic unit to crack down on speeding and reckless driving, the most frequent complaint from residents. He also wants to restore the crime suppression unit, a team that targeted trouble spots.

Even short-staffed, police have been getting results in the past year. The narcotics unit arrested nearly a half-dozen suspected heroin dealers, and the patrol division won praise from downtown businesses by cleaning up the seedy lower Summer Street section.

New Rules

Young officers and veterans alike are watching to see if the promised changes happen.

"This is my first chief change," Officer Chris Bird said. "It's almost comparable to a football team getting a brand-new coach. You have to be optimistic. It's a new regime; you have to hope for the best — which it's been."

Two months after Osanitsch was sworn in, he faced a test. Officers filed a minor misdemeanor charge against an off-duty lieutenant who had been in a dispute with his wife. Osanitsch drove to work on a Sunday night to collect the officer's badge and gun, and made sure the officer had access to the employee assistance program if he wanted it. The case was resolved and the lieutenant has resumed work.

Longtime officers say that's a change from the days when the matter might have been buried or held over the lieutenant's head for years. Morrell said the new chief's philosophy demands discipline, but without grudges: "I've seen him give people a suspension, but then it's over. They'll shake hands with him after."

Sgt. Russ Marcham, one of the agency's newer street supervisors, emphasizes the line between errors and misconduct. In addressing patrol officers, he puts forward four rules.

"Do your job, don't embarrass yourself, don't embarrass me, don't paint me into a corner where I can't defend you," Marcham said. "If you're doing your job, No. 2 is not going to happen, No. 3 is not going to happen, No. 4 is not going to happen.

"Everyone is entitled to have an 'oops' on the job, have an honest goof-up. I can defend you on that," he said. "With some of the things that happened here in the past, guys maybe hadn't done their jobs or had embarrassed themselves and added to that stigma of low morale. All of that seems to have changed."

While the department still has some internal rivalries, officers say the mood is lighter now in cruisers, the locker room and the staff lounge. More relatives and off-duty police show up for promotion ceremonies, and they're more likely to stay and chat afterward.

Officer Scott Hayden says the results are obvious every day.

"When I stop in at businesses and talk with the business owner or workers, they're much more happy to see us, much more willing to provide us with information so we're able to help them," Hayden says. "We feel like we're more of a functioning police department again. It's much better that we can work more closely with the public."

003430

Monica Ervin now Monica Force

4 - Wednesday, July 19, 2006

The Bristol Press

Bristol News

HAVE NEWS?

Amy V. Talit covers police and fire departments and homeland security. Contact her at atalit@bristolpress.com or 584-0504 ext. 256

City NAACP leaders assail police

False reports, profiling alleged

By Amy V. Talit
The Bristol Press

BRISTOL — Two officers of the recently reactivated Bristol NAACP branch brought a host of complaints before the Board of Police Commissioners Tuesday night charging that police officers file inaccurate reports and racial profiling exists within the department.

At the outset Monica Ervin, president of the local branch of the National Association for the Advancement of Colored People, accused four police officers of lying in a report written about an incident involving Ervin's daughter and landlord.

Ervin alleged that Officer Brian Andrews did not accurately report a complaint in which she alleged that her landlord snuck into her apartment and used his cellular phone camera to take pictures of her daughter who was in bed.

She further alleged that Andrews' supervisor, Sgt. Michael Healey, his supervisor, Lt. Richard Brown, and his supervisor, Capt. Daniel McIntyre, had all knowingly accepted and signed off on Andrews' report of the events.

Ervin demanded a panel to investigate her complaint. There was no specific response Tuesday from commissioners on that request.

Lt. Thomas Grimaldi, the department's records division lieutenant and public information officer, said he could not comment on Ervin's accusations. He said he would need to look into it by pulling the appropriate files before he could respond.

After addressing her personal issue, Ervin leveled a claim of racial profiling within the police department recounting an incident she experienced Sunday after shopping at Price Chopper in Bristol Commons Plaza on Farmington Avenue.

She said she witnessed a police officer closely follow a vehicle full of black men up and down aisles of the parking lot until the vehicle parked. According to Ervin, the officer tailing the vehicle then stopped his cruiser and demanded the driver provide him with identification.

Ervin said when a second officer arrived, she asked him what the first officer's name was, but did not interfere in the proceedings. She said she has notes she took of the incident. She claimed the men under surveillance may have been arrested if she had not been there. She did not identify the officers. She said she has asked the state's U.S. Senators, U.S. Rep. John Larson, 1st District, and state Reps. William Hamzy, R-Plymouth and Betty Boukus, D-Plainville, and state Sen. Thomas Colapietro, D-Bristol, to meet with her on this concern.

Again, police officials were unable to comment specifically on that case.

Typically visitors to commission meetings are restricted to speaking during a specific public commentary period, but Ervin and the Rev. E. J. Moss, NAACP branch treasurer, broke into discussions on several occasions.

Moss said "it's most unconscionable" that the youths who were charged with the June 11 vandalism of Chippanee Golf Club in which swastikas and racist graffiti were found are not facing additional hate crime charges.

The youths were not charged with hate crimes, according to a statement Monday from Grimaldi, because based on the investigating officers' investigation, the crimes fell short of meeting the guidelines of a hate crime as defined in the state statute.

Moss claimed that police officers responding to calls do not always have pen and paper to write down what is being said, and he questioned the likelihood of the officers' reports being accurately written.

"It is not possible," said Moss, "for officers to go to a scene and write an accurate report without a pen and paper."

Moss further demanded Police Chief John DiVenere require all officers to carry and use a pen and paper at all scenes to accurately document the situation.

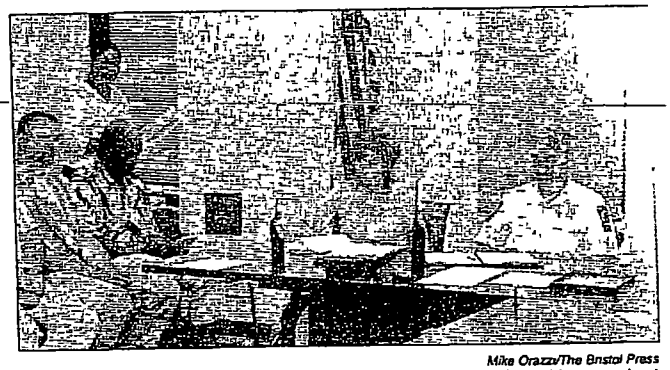
Moss also requested the police department's reports of all vehicles stopped in the last three years for defective equipment. He said he wants to know the names and ethnicity of the motorists pulled over, as he believes "racial profiling is alive and well."

There was no response Tuesday on that request from commissioners. "The reverend is spouting about racial profiling. He is grandstanding just as state Rep. (Roger) Michelle (D-Bristol) did back when the NAACP decided to get involved with the radio station," said police union local President Ken Gallup, adding the NAACP officials have no proof of their claims.

As an example Gallup said the situation Moss referred to about an officer lacking pen and paper was misrepresenting. The officer had pen and paper, but did not have a statement form and had to return to his cruiser to get one, he noted.

Mike Orazzi/The Bristol Press

The Rev. E.J. Moss, treasurer of the city chapter of the NAACP, speaking at Tuesday's police commission meeting.



Mike Orazzi/The Bristol Press

President of the Bristol NAACP chapter Monica Ervin, far left standing, addresses a host of concerns about the city's police department at Tuesday's police commission meeting.

Mike Orazzi/The Bristol Press

Mayor Bill Stortz, at right, speaks during Tuesday's police commission meeting. City Councilor Frank Nicastro is at left.

police arrests

All information listed below was provided by area police departments.

BRISTOL — Charlie Lugo, 24, of 10[illegible] Federal St. was charged Monday with disorderly conduct and third-degree assault.

Mitchell Bachman, 18, of 18 Mountain View Ave. was charged Tuesday with second-degree breach of peace, third-degree assault, driving under the influence and another motor vehicle violation.

Jesus Garcia, 23, of 164 Park St. was charged Tuesday with interfering with an officer, driving under the influence of alcohol or drugs and several other motor vehicle violations.

STATE OF CONNECTICUT

JUDICIAL REVIEW COUNCIL

February 15, 2012

Ms. Monica L. Fore
583 Propsect Avenue, Unit 24
West Hartford, CT 06105

Dear Ms. Fore:

COMPLAINT
HONORABLE PATTY PITTMAN

The Judicial Review Council has concluded its investigation of your complaint, dated July 7, 2011, against Honorable Patty Pittman, and, at its meeting on February 15, 2012, determined, on the basis of the facts before it, that there was no violation of the Code of Judicial Conduct or Section 51-51i of the Connecticut General Statutes.

Your complaint, therefore, has been dismissed.

Very truly yours,

Scott J. Murphy
Executive Director

SJM: rne

Telephone (860) 566-5424 • Facsimile (860) 566-6617 • Website. www ct gov/jrc
505 Hudson Street, P O Box 260099, Hartford, CT 06126-0099
Please reply to P O Box
An Equal Opportunity Employer

JUDICIARY COMMITTEE

March 16, 2012

The Connecticut Conference of Municipalities (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 the opportunity to testify on bills of interest to towns and cities.

HB 5501 **An Act Concerning Eyewitness Identification Procedures**

The bill will require police departments to adopt specific procedures regarding eyewitness identification photo and live lineups.

CCM commends the Eyewitness Identification Task Force for taking on such an important subject.

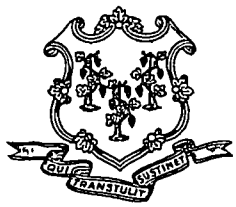
CCM is concerned, however, that the bill would have fiscal implications for towns and cities – especially smaller communities. We urge the Committee to obtain a fiscal note prior to taking action on this bill.

★ ★ ★ ★ ★

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

SENATOR MARTIN M. LOONEY
MAJORITY LEADER

Eleventh District
New Haven & Hamden



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March 16, 2012

Good Afternoon Senator Coleman, Representative Fox and members of the Judiciary Committee. I am here to testify in support of HB 5501, AN ACT CONCERNING EYEWITNESS IDENTIFICATION PROCEDURES.

It is no secret that eyewitness identification is a conundrum of the criminal justice system. It is prone to stunning inaccuracy, but it is also perhaps the most compelling testimony in a courtroom. Last year I was honored to work with Justice Borden and this committee on passage of PA 11-252 which requires that municipal police departments and the Department of Public Safety adopt certain procedures regarding photo line up and live line up eyewitness identification. These procedures include 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.

The Act also created a 19-member Eyewitness Identification Task Force to study eyewitness identification in criminal investigations and submit a report on best practices including those regarding the use of sequential live and photo lineups. The Task Force, inspired by Justice Borden, is composed of a diverse mix of persons with differing

professional responsibilities within our criminal justice system and a full spectrum of professional perspectives as well as academic scholarship was represented on the Task Force. The Task Force included the Co-Chairs and Ranking Members of the Judiciary Committee; a retired judge; representatives of the Offices of the Chief State's Attorney and Chief Public Defender; representatives of state and local police departments; legal scholars; social scientists; the State Victim advocate; a representative of the Connecticut Innocence Project; representatives of the public; and representatives of the Bar. It has examined the science of conducting sequential lineups, the use of sequential lineups in other states, the practical implications of state law requiring sequential lineups, and many other related topics. The Task Force recently submitted its report on best practices and the legislation before you reflects the work done by this impressive Task Force. Passing HB 5501 would represent another improvement in the accuracy of our judicial system by further addressing the notorious paradox of eyewitness identification.

This bill adopts many of the recommendations of the Task Force. It requires that the Police Officers Standards and Training Council, and the Division of the State Police collaborate to create uniform mandatory policies with appropriate guidelines based on best practices. The bill further requires that these best practices be followed by all municipal and state law enforcement agencies It requires that every basic or review training program for police officers provide training to the officers in the administration of this eyewitness identification procedure. Among the mandatory requirements for these best practices are that eyewitness identification line ups be sequential and double blind. A detailed written record of each eyewitness identification is also required. In

addition, this legislation would allow the Eyewitness Identification Task Force to assist POST and the Division of the State Police in developing the policies and guidelines. The Task Force will also monitor the implementation of this law and recommend proposed legislation related to this issue. I would ask that you also consider implementing the recommendation for a pilot program for videotaping the double blind sequential procedures. This would prove additional useful information that could be used in future policies and guidelines. Thank you for raising this important legislation.

TESTIMONY OF DARIEN POLICE CHIEF DUANE LOVELLO REGARDING RAISED BILL 5501, *AN ACT CONCERNING EYEWITNESS IDENTIFICATION PROCEDURES, FEBRUARY SESSION, 2012*

As an appointed representative of the Connecticut Police Chiefs Association to the Legislature's *Eyewitness Identification Task Force,* I generally support the bill and the recommendations of the *Task Force* but urge that lines 125 and 126 in the raised bill be stricken or modified. The use of a "folder shuffle blind method" lineup under certain circumstances, as recommended by the *Task Force* and included in the bill, would preclude an officer from knowing the specific order in which photos were presented, and could leave the officer unable to record such order as required by lines 125 and 126. I think a method to address this issue is better left to being incorporated into the mandatory policy.

I support the bill's mandate that the Police Officer Standards and Training Council and Division of State Police be charged with drafting mandatory policies implementing best practices and policies consistent with the statute, and would urge restraint in further codifying such practices via statute. Given that the bill requires the continued existence of the *Task Force* and its charge to research, evaluate and recommend changes in best practices regarding eyewitness identification to the Police Officer Standards and Training Council and Division of State Police, such changes could be accomplished more quickly by the *Task Force* than by legislation.

Submitted March 16, 2012

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March 16, 2012

Testimony presented to the Joint Committee on Judiciary

Chief Anthony Salvatore and Chief Matthew Reed for the Connecticut Police Chiefs Association

The Connecticut Police Chiefs Association (CPCA) represents all municipal police departments in Connecticut as well as police departments at private and state universities.

Testimony regarding **H.B. 5501**, AAC Eyewitness Identification Procedures.

CPCA SUPPORTS the findings of the Eyewitness Identification Task Force and agrees that the methods utilized by police to establish the identity of an offender must conform with scientifically recognized and beneficial procedures used by law enforcement entities throughout the country.

CPCA questions whether the codification in statute of this or any other law enforcement procedure is in the best interest of the State, crime victims or the police. There are numerous, well established protections already in place that ensure that a suspect's rights are protected.

Instead, CPCA would rather the proposed statute codify the State's mandate that law enforcement discontinue the use of simultaneous array procedures and instead adopt the use of sequential eyewitness identification procedures. The statute should mandate that the Police Officer Standards and Training Council (POSTC) promulgate regulations and a model policy and procedure for the conduct of eyewitness identification in accordance with the findings of the Eyewitness Identification Task Force.

Our research failed to reveal any other state that has codified the step by step procedure as this proposed bill does. Instead, those state legislatures who have addressed the issue have mandated that their police oversight agency and police agencies in their state adopt appropriate policies instituting the sequential identification procedure.

It is CPCA's opinion that by codifying in statute the specific, detailed procedure police must follow, the ability to modify the procedure to conform to evolving trends in eyewitness identification will be stymied and bind any future modifications to the legislative process.

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Testimony of David R. Cameron
in support of
House Bill 5501 (Raised), An Act Concerning Eyewitness Identification Procedures

Committee on the Judiciary
March 16, 2012

I am David R. Cameron. I am a Professor of Political Science at Yale University and a resident of New Haven, CT. I am a member of the Eyewitness Identification Task Force which was created by Public Act No. 11-252. I appear before you today in support of House Bill No. 5501 (Raised), An Act Concerning Eyewitness Identification Procedures.

As you know, the Innocence Project has found that the single most frequently-occurring cause of the 289 wrongful convictions that have been overturned with DNA evidence is the identification of an innocent person as the perpetrator by one or more eyewitnesses to a crime. It has found that such misidentifications occurred in more than 75 percent of the wrongful convictions that were later – usually much later – vacated because of DNA evidence.

Public Act No. 11-252 represented an important step forward in reducing the frequency with which eyewitness misidentifications occur. In particular, it mandated that, "when practicable, the person conducting the identification procedure shall be a person who is not aware of which person in the photo lineup or live lineup is suspected as the perpetrator of the offense." In other words, when practicable, the administration of the identification procedure would be "double blind." That provision took effect on Jan. 1, 2012.

The Innocence Project argues – persuasively, I believe – that the single most crucial reform needed to reduce the frequency of eyewitness misidentifications is double blind administration. As important as Public Act No. 11-252 was, the words "when practicable" created a large loophole that allows investigators who know the identity of the suspect to administer the identification procedure. The size of that loophole is perhaps best illustrated by the fact that only seven of the 73 police departments that responded to the Task Force survey said double blind administration best describes their eyewitness identification process (Table 2, Appendix II of the Task Force report). Likewise, only 24 of the 73 said they foresaw no obstacles to implementing double blind administration by Jan. 1, 2012 (Table 3, Appendix II of the Task Force report)

Section 1(c)(2) provides an important remedy for that loophole. It stipulates that, in the event double blind administration is not practicable, as may well be the case for small departments and perhaps even large ones at certain times of the day, "the photo lineup shall be conducted by the use of a folder shuffle method, computer program or other comparable method so that the person conducting the procedure does not know which photograph the eyewitness is viewing during the procedure." This alternative, which the Task Force developed in the course of its meetings with law enforcement personnel and researchers, ensures that, even if the identification is conducted by the officer investigating the crime, that officer will not know which photo the eyewitness is viewing at any particular moment.

As you know, the primary reason the Task Force was created was "to study issues concerning eyewitness identification in criminal investigations and the use of sequential live and photo lineups." It was directed to "examine: (1) The science of sequential methods of conducting a live lineup and a photo lineup, (2) the use of sequential lineups in other states, (3) the practical implications of a state law mandating sequential lineups, and (4) such other topics as the task force deems appropriate relating to eyewitness identification and the provision of sequential lineups." (Sec. 2(a), Public Act No. 11-252) The Task Force was given that charge largely because there existed a good deal of controversy about the sequential – i.e., one-at-a-time method of presentation to an eyewitness of a crime of photos of the suspected perpetrator and others who are known to be innocent.

I prepared a memorandum for the Task Force that summarized the academic research conducted over the past 30 years that has sought to compare the effects of simultaneous and sequential methods of presentation as well as the several field studies conducted in police departments over the past decade that have examined the issue. That memorandum appears as Appendix IV of the Task Force report. Since you have that memorandum, I shall limit myself to a very brief summary of the research and field studies. (Full citations appear in the memorandum.)

In the wake of several U.S. Supreme Court decisions in the late 1960s and 1970s that were concerned with the reliability of eyewitness identifications, academic researchers began to conduct laboratory experiments to identify the impact of various aspects of the identification procedure on the frequency of misidentifications. One such aspect concerned the method by which a suspect in a crime is presented for possible identification by one or more eyewitnesses to the crime. For decades, law enforcement agencies routinely presented the suspect in a live lineup or photo array that included several other individuals or photos of individuals known to be innocent. In 1984, Dr. Gary Wells suggested that the simultaneous method of presentation may contribute to misidentifications by causing eyewitnesses to make a "relative judgment" – that is, to compare the six or eight photographs (or persons in a live lineup) and choose the person who looks most like the person they saw commit the crime – rather than an "absolute judgment" – that one of the individuals was in fact the person they saw commit the crime.

In 1985, Lindsay and Wells (1985) proposed the sequential method of presentation – that is, the suspect and innocent fillers viewed one at a time in separate photos – as an alternative to the simultaneous method. Using a fully randomized 2 X 2 experimental design – i.e., culprit present/culprit absent, sequential/simultaneous presentation – they found the sequential method of presentation resulted in a substantially lower frequency of filler identifications – only 2 percent vs. 12 percent with the simultaneous method of presentation. And they found that with the culprit absent, there was a much lower frequency of filler identification with the sequential method (35 percent) than with the simultaneous method (58 percent).

Over the nearly three decades since then, more than 70 experiments have been conducted to compare the frequencies with which eyewitnesses to a simulated crime identified the culprit or others in a lineup when the photos were presented and viewed simultaneously or sequentially. Twenty-seven of those 70-plus experiments employed the fully randomized 2 X 2 design. In their meta-analysis of those experiments, Steblay, Dysart, and Wells (2011) found the sequential method of presentation produced a lower frequency of filler identifications than the simultaneous method in culprit-present lineups (19 percent vs. 25 percent) and a substantially lower frequency

of filler identifications in culprit-absent lineups (32 percent vs 54 percent) Employing the sequential method of presentation certainly will not eliminate all misidentifications But it will at least result in fewer misidentifications than occur with simultaneous presentation.

Over the past decade, those laboratory experiments have been supplemented with several studies conducted in police departments that have observed the frequencies of filler identifications in lineups that included a suspect in an actual crime and were viewed by actual eyewitnesses to a crime. Those studies – conducted in Hennepin County (Minneapolis and three neighboring cities), Illinois (Chicago and two neighboring cities), and, most recently, Austin, Texas and three other cities – establish conclusively that the sequential presentation of suspect and fillers, when coupled with the double-blind administration of the lineup, reduces the likelihood that an eyewitness to a crime will identify an innocent filler rather than the person who is suspected of having committed the crime.

In the Hennepin County study, directed by Sen Amy Klobuchar when she was County Attorney, eyewitnesses who did not know the suspect identified a filler rather than the suspect in 11 percent of the lineups conducted with double-blind administration and sequential presentation. Despite serious flaws in some aspects of the Illinois study and the inferences that were widely and incorrectly drawn from it, its findings were very similar with respect to lineups that used both double blind administration and sequential presentation: fillers were incorrectly identified as the perpetrator by eyewitnesses in 9.2 percent of such lineups.

Unlike the Hennepin County and Illinois studies, which for different reasons were not designed so as to allow a comparison of the frequencies of filler identifications in lineups that employed only double blind administration but varied in using either simultaneous or sequential presentation, the American Judicature Society study conducted by Professors Wells, Steblay, and Dysart (2011) in Austin, Tucson, Charlotte, and San Diego, was designed to allow such a comparison. That study found that fillers were incorrectly identified by eyewitnesses as the perpetrator in 12.2 percent (with two laps) of the lineups in which the photos were presented sequentially and in 18.1 percent of the lineups in which the photos were presented simultaneously. Controlling as it did for virtually every other "system" variable – lineup administration, filler selection, instructions, etc. – the AJS study revealed that sequential presentation reduced the frequency with which fillers were mistakenly identified by about 33 percent. Put another way, the simultaneous method of presentation resulted in a 50 percent increase in the frequency with which an innocent filler was incorrectly identified by an eyewitness as the perpetrator of the crime he or she saw.

As Wells, Steblay, and Dysart (2011) say, sequential presentation is not a "silver bullet;" even with blind administration, it won't prevent all eyewitness misidentifications – the single most important cause of wrongful convictions But it will substantially reduce the likelihood that such misidentifications – and wrongful convictions – occur.