

## SANTA CLARA COUNTY LINE-UP PROTOCOL

### INTRODUCTION

Valid eyewitness identifications are crucial to solving crimes and convicting criminals. Law enforcement agencies nationwide and the U.S. Department of Justice<sup>1</sup> are always looking to improve the process of obtaining reliable identification. There are two small but significant changes that add reliability to the eyewitness identification process. Complying with these new procedures will ensure better results. It will mean more guilty people are properly identified. Failure to comply with these new procedures will make even good identifications more likely to be rejected in court.

First, ideally, the officer conducting any photo or live line-up should not know the identity of the suspect; the officer who doesn't know the suspect from the fillers cannot influence the process.

Second, line-ups will be conducted sequentially and not simultaneously. The officer will show the witness only one photo or one person at a time.

### EYEWITNESS IDENTIFICATION PROTOCOL

Continue applying current protocol for eyewitness identification with the following two exceptions.

One, wherever possible, the officer conducting a line-up should not know the identity of the suspect. It is recognized that in some cases this will simply not be possible because no other appropriate officer is available. In these cases, the investigating officer can conduct the line-up using extreme care not to communicate the identification of the suspect in any way. While it is not fatal to a case for the investigating officer to conduct his or her own line-up, the case will be stronger and less vulnerable to courtroom second-guessing if it is done by an officer who does not know the identity of the suspect. Therefore, wherever possible, an officer who does not know the identity of the suspect should conduct the interview.

Two, in all cases, show the witness the photos or persons comprising the line-up *sequentially* not *simultaneously*.

### HOW TO CONDUCT A SEQUENTIAL LINE-UP

First, comport with current training and policies concerning line-ups while making the following changes.

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<sup>1</sup> *Eyewitness Evidence* National Institute of Justice, U.S. Department of Justice, Office of Justice Programs, NCJ 178240.

Second, assemble the suspect or suspect's photo and at least five fillers in the normal manner. If it is a live line-up then secure the suspect and at least five fillers in the normal manner. Make sure the witness cannot see either the suspect or the fillers. Arrange the six in random order. Record this order.

Third, admonish the witness in compliance with current training and policies:

- (1) He/she will be asked to view a set of individual photographs.
- (2) It is just as important to clear innocent persons from suspicion as it is to identify guilty parties.
- (3) Individuals may not appear exactly as they did on the date of the incident as head and facial hair are subject to change.
- (4) The person who committed the crime may or may not be shown.
- (5) Assure the witness that regardless of whether an identification is made, the police will continue to investigate the incident.
- (6) The procedure requires that the investigator ask the witness to state, in his or her own words, how certain he or she is of any identification.

In addition, instruct the witness that:

- (7) Photos/persons will be viewed one at a time.
- (8) Photos/persons will be presented in random order.
- (9) The witness may take as much time as needed in making a decision about each person before moving on to the next one.
- (10) The witness should identify the person who committed the crime, if present.
- (11) All persons will be presented, even if an identification is made.
- (12) If the witness wishes to view the photos/persons again, he or she may do so.

Fourth, conduct the sequential line-up as follows:

- (13) Confirm that the witness understands the nature of the sequential procedure.
- (14) Present each photo/person to the witness separately in a previously determined and random order.
- (15) Remove each photo/person before presenting the next one.
- (16) Record both positive identification and non-identification results in writing, including the witness' own words regarding how sure he/she is.
- (17) Ask the witness to sign and date the results.
- (18) Document, in writing, the lineup procedure, including:
  - (a) Identification information and source of all photos/persons used;
  - (b) Names of all persons present at the lineup;
  - (c) Date and time of procedure.

## FREQUENTLY ASKED QUESTIONS

- (1) Why are we doing this?

Law enforcement jobs are hard enough, so no one wants to make it harder. These changes will require more work in some cases. Nonetheless, they are worth it because according to exhaustive studies conducted under the supervision of law enforcement agencies nationwide and the Department of Justice and reviewed by our Office of the District Attorney, these new procedures will make our eyewitness identifications more reliable. If they are more reliable, we're going to apprehend more guilty criminals. Also, since these are the procedures recommended by the Department of Justice, if we fail to follow them without valid reason, cases are going to be attacked in court.

- (2) Why do we need to get an officer who doesn't know the identity of the suspect to conduct the line-up?

The DOJ study found that even the most experienced officer can inadvertently give subconscious hints to the witness to identify the suspect. This can result in false identification. This change brings us in line with other professionals. For example, doctors who are conducting medical research never know whether their patient is receiving the new experimental drug or a placebo. This way they can never be accused of influencing the results. By using these new protocols we will bring our practice in line with other professionals.

- (3) Why are sequential lineups supposed to be any better than the normal ones?

By studying cases where DNA has proven that innocent people have been convicted, we have learned that there are many causes of false convictions. One cause - cases of good witnesses honestly but falsely making an identification. Exhaustive studies have found that witnesses are much more likely to identify the guilty suspect if the lineup is sequential. Under traditional simultaneous lineups, some witnesses will inadvertently begin to compare the photos to one another instead of comparing the photo to their memory. Consequently, the identifications are not as reliable as those conducted sequentially.

- (4) Do I use the same procedure for live lineups as photo lineups?

Yes.

- (5) Does this change the way I conduct in-field show-ups?

No. Since in-field show-ups are used to show the witness a single suspect apprehended near the scene, there is no danger of the witness making comparisons. In general, of course, lineups are preferable to show-ups.

- (6) What happens if the witness picks out the very first photo/person? Do I continue with the rest?

Yes. Note the witness' identification and degree of certainty, but show the witness all the photos/persons.

(7) If the witness wants to see a particular photo again, may I show it?

Yes, but you must show all the photos/persons again in random order. In other words, if the witness says, "I want to see number three again," you should tell the witness that you will show all the photos/persons again. The witness can spend as much and as little time on any one photo/person that he or she wants.

(8) Can a witness compare particular photos if he or she wants to?

No. The witness can only look at one photo/person at a time. Make sure that you remove one photo/person before showing a new one.