

## More of What Chiefs Need to Know About Eyewitness Identification

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The recent article by in *Police Chief* by Sheri H. Mecklenburg, Patricia J. Bailey, and Mark R. Larson titled “Eyewitness Identification: An Update on What Chiefs Need to Know” (July 2013) was a timely reminder that law enforcement agencies need to develop clear and defensible procedures for obtaining and documenting eyewitness identification evidence. A national survey of law enforcement agencies conducted in 2011 by the Police Executive Research Forum and funded by the National Institute of Justice gives a sense of where U.S. law enforcement agencies are at in this process of developing eyewitness identification procedures<sup>2</sup>. Using a stratified random sample of U.S. law enforcement agencies, the PERF/NIJ survey obtained data from 619 agencies. Despite the widespread attention that has been given to the issue of mistaken eyewitness identification, especially over the last decade, 64% of the agencies reported having no written policies for the construction or administration of photo lineups and 84% reported having no written policies for the construction or administration of live lineups.

Mecklenburg, Bailey, and Larson (MB&L) focused only on two aspects of eyewitness identification procedures, namely the sequential lineup as an alternative to the simultaneous lineup and the use of a blind administrator for administering lineups rather than the more typical practice of permitting the case investigator to administer his or her own lineups. There are other issues as well, such as how witnesses are instructed prior to the lineup, how fillers are selected for the lineup, securing a statement of certainty from witnesses at the time of any identification, and so on. All of these need to be considered in developing an eyewitness identification policy.

But my commentary will focus almost exclusively on the issue of sequential and double-blind lineup procedures because that is what MB&L chose to target. According to the results of the national PERF/NIJ survey, 31% of law enforcement agencies were using double-blind procedures in 2011 and 32% were using sequential procedures. And this 2011 survey already underestimates the current percentages (e.g., since that time many jurisdictions, such as the entire states of Ohio and Connecticut, have switched to double-blind, sequential, or both). I encourage police chiefs to check with jurisdictions that now have many years of experience with double-blind and sequential procedures (such as New Jersey, North Carolina, Santa Clara County, CA, and cities such as Boston and Dallas) to see what their experience has been.

Police chiefs are no doubt already well aware of the fact that 75% of DNA exonerations are cases involving mistaken eyewitness identification, so I will not dwell on that point. At the end of this commentary, however, I will show the results of another type of data with which most people are not familiar, which is based on outcomes from thousands of lineups. But my intent in this commentary is to correct what I believe are specious or incomplete arguments and selective reports of what the scientific data show on simultaneous and sequential procedures. The most efficient way for me to do this is by using quotes from the Mecklenburg, Bailey, and Larson article and then commenting on each point.

**MB&L:** *“Recent research suggests that reduction in filler identifications in the sequential procedure is not the product of absolute judgment, but rather is due to a criterion shift, or the point at which a witness is willing to identify someone. Thus witnesses will use a stricter standard before making an identification in a sequential lineup—making it less likely for witnesses to make any identification, accurate or false.”*

**Comment:** This is largely true. But, as scary as the term “criterion shift” sounds, it just means that the sequential is a higher standard and that a witness has to be more certain before she or he will identify

<sup>1</sup> Gary Wells introduced the distinction between system variables and estimator variables in eyewitness identification in 1978. He has conducted controlled studies and published over 150 papers on eyewitness identification issues since 1978. He was the chief scientist involved in the AJS field study of lineups. He was a planning panel member and an author of the first guidelines on eyewitness identification issued by the National Institute of Justice and has worked with law enforcement agencies and policy makers across the U.S. in their efforts to revise their eyewitness identification procedures.

<sup>2</sup> Police Executive Research Forum (2013), *A National Survey of Eyewitness Identification Processes in Law Enforcement Agencies*, <http://policeforum.org/library/eyewitness-identification/NIJEyewitnessReport.pdf> (accessed July 23, 2013).

someone. In other words, it is a more conservative procedure. In fact, since the very first empirical experiment in 1985, testing simultaneous versus sequential lineups, it has been clear from the data that witnesses are less likely to make an identification with the sequential. Saying that the sequential produces a conservative criterion shift is not actually an explanation of anything, it is simply a re-description of the fact that witnesses are less likely to make an identification. The original conceptualization stated that the simultaneous lineup tends to evoke relative judgments (comparing one lineup member to the others to decide who looks most like the culprit) whereas the sequential tends to force witnesses to make a more absolute and non-comparative judgment (is this the person or not?). Absolute judgments will produce a more conservative criterion than relative judgments. And, there are several important consequences of using a more conservative procedure. One is that it leads to fewer identifications (more non-identifications) and this can include non-identifications of a culprit in addition to non-identifications of innocent suspects. But when a more conservative identification procedure is used, accuracy increases among those who make identifications. Stated another way, the sequential is less likely to produce an identification, but when an identification occurs it is more trustworthy.

**MB&L:** *“In 2006, McQuiston-Surrett and others, determined that nearly half of the experimental studies used as support for the claims of sequential superiority were unpublished experiments...[McQuiston-Surrett, et al.] further observed that there is no evidence that [sequential lineups] are in overall terms superior to [simultaneous lineups].”*

**Comment:** It is curious that MB&L chose to quote from an older meta-analysis<sup>3</sup> when a more complete one (involving 72 tests from 23 different labs) conducted more recently is readily available<sup>4</sup>. And this newer meta-analysis bases its primary conclusions on published and peer reviewed articles. The larger and more recent meta-analysis shows that the sequential results in fewer identifications of innocent suspects and some loss in rates of identifying the culprit. But, when a witness makes an identification with the sequential it is more likely to be accurate. Another quantitative analysis of the large simultaneous versus sequential lab data, published in 2012, showed this same pattern<sup>5</sup>.

**MB&L:** *“Gronlund and others conducted 24 experiments comparing sequential and simultaneous lineups: 19 experiments showed no difference between the two methods, 3 showed a simultaneous advantage, and 2 showed a sequential advantage.”*

**Comment:** This is correct but misleading. The Gronlund et al. study, which was conducted online, had a critical flaw that virtually guaranteed that no procedure could be any better than any other procedure. In conducting eyewitness identification experiments, two types of lineups are constructed; one includes the culprit (called a culprit-present lineup) and the other substitutes an innocent person for the culprit (creating a culprit-absent lineup). Half of witnesses view a culprit-present lineup and half view a culprit-absent lineup. In selecting an innocent suspect to replace the culprit for the culprit-absent lineup, Gronlund et al had people search a large data base and then selected two innocent replacements that the authors thought looked like the perpetrator. The data themselves show that they must have found near-clones to replace the culprit in the culprit-absent lineups. Shockingly, *the innocent suspect replacement for the culprit was identified more often than the culprit himself* in 9 of the 16 conditions in the Gronlund et al. study in which the lineups were designed to be “fair.” Overall performance across the studies, which kept using these same materials, was at near-chance level of responding for both simultaneous and sequential procedures. Little wonder that no overall differences emerged between simultaneous and sequential procedures in the Gronlund et al work. It would be like testing whether people who are instructed to try to get “heads” in coin flip are better with their dominant hand than with their non-

<sup>3</sup> A meta-analysis is a method of combining a large number of studies that are testing the same question in order to yield a quantitative estimate of the overall data. Meta-analyses are considered to be more reliable indicators of a finding because any given study might be an outlier due to hidden flaws or mere chance.

<sup>4</sup> Steblay, N. K., Dysart, J. E., & Wells, G. L. (2011). Seventy-two tests of the sequential lineup superiority effect: A meta-analysis and policy discussion. *Psychology, Public Policy, and Law*, 17, 99-139.

<sup>5</sup> Clark, S. E. (2012). Costs and benefits of eyewitness identification reform: Psychological science and public policy. *Perspectives on Psychological Science*, 7, 238–259; also see Wells, G. L., Steblay, N. K., & Dysart, J. (2012). Eyewitness identification Reforms: Are suggestiveness-induced hits and guesses true hits? *Perspectives on Psychological Science*, 7, 264-271.

dominant hand. There will be no differences, of course, but we would not conclude from such a study that dominant hands are no more skilled than non-dominant hands because performance is at chance regardless of which hand one uses. One can always cherry pick a study to accord with a predetermined preference, which is why it is better to rely on meta-analyses than any given study (see footnote 3).

**MB&L:** *“The sequential method is potentially more suggestive than the simultaneous photo array, since the administrator of the lineup knows exactly which individual photo the witness is viewing at any given moment. In comparison, the administrator of a traditional photo array does not know which photo the witness is actually viewing. Thus, the opportunity to cue a witness is built into the very structure of the sequential procedure.”*

**Comment:** There is some potential truth to this. Social scientists speculated on this possibility over 15 years ago<sup>6</sup> and there is one study suggesting that lineup administrators might influence witnesses more with a sequential than a simultaneous procedure<sup>7</sup>. But more recent work found that lineup administrators influenced witness choices more with simultaneous than with sequential lineup<sup>8</sup>. The fact is that the opportunity to cue the witness is built into all identification procedures that are not conducted using double-blind procedures (or their functional equivalency). Regardless of whether procedures are sequential or simultaneous, jurisdictions still should use double-blind methods.

**MB&L:** *“eyewitness researchers have acknowledged that ‘[t]he lineup setting is different from the traditional setting in which experimenter expectancy effects have been observed.’ Greathouse and Kovera, 72”*

**Comment:** This quote was from the introduction to Greathouse and Kovera’s article, which was followed by a study of the double-blind lineup procedure. MB&L used this quote to distance the double-blind lineup idea from the extant scientific literature on expectancy effects, which shows that the expectations of a tester influence the person being tested. What MB&L do not do is go on to report the findings in the Greathouse and Kovera study, which showed that non-blind lineup administrators did in fact exert influence over witnesses’ identification decisions whereas blind administrators did not. In addition, and this is quite important, Greathouse and Kovera reported that both the lineup administrators and the witnesses themselves showed little or no awareness of the influence.

**MB&L:** *“every jurisdiction that has used blind administrators, to the authors’ knowledge, has had to settle for far less than full compliance.”*

**Comment:** This is likely to be true, and I certainly know of such instances, which is why jurisdictions that have adopted double-blind lineup procedures insert caveats into their language (e.g., “whenever possible”). In that manner, failure to use a double-blind procedure “goes to weight” in any later proceedings rather than being de facto excluded as evidence. Moreover, if 100% compliance is required in order to consider a recommendation or guideline successful, it seems likely that no recommendation or guideline on any matter at all would pass muster. Better to do 90% or more double blind than 0% double-blind.

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<sup>6</sup> Wells, G. L., Small, M., Penrod, S. J., Malpass, R. S., Fulero, S. M., & Brimacombe, C. A. E. (1998). Eyewitness identification procedures: Recommendations for lineups and photospreads. *Law and Human Behavior*, 22, 603-647.

<sup>7</sup> Phillips, M. R., McAuliff, B.D., Kovera, M.B., & Cutler, B. L. (1999). Double-blind photoarray administration as a safeguard against investigator bias. *Journal of Applied Psychology*, 84, 940-951.

<sup>8</sup> Greathouse, S. M., & Kovera, M. B. (2009). Instruction bias and lineup presentation moderate the effects of administrator knowledge on eyewitness identification. *Law and Human Behavior*, 33, 70-82.

### Double-Blind Lineups

Double-blind testing has long been a staple practice in scientific and medical testing of human participants. Double-blind testing means that neither the person being tested nor the person doing the testing knows the so-called “correct” or expected or desired answer. In pharmaceutical tests, for example, neither the doctor nor the patient knows whether the patient is in the placebo condition or the experimental-drug condition. It is not the purpose of double-blind procedures to prevent intentional influence over the results, but rather to prevent unintentional influence. Testers are generally unaware of the influence they can have over the responses of the person they are testing. A double-blind lineup is one in which the person who administers the lineup, takes an identification statement from the witness, and writes a summary statement regarding the identification, is unaware of which person in the lineup is the possible suspect and which are merely fillers.

The double-blind lineup was first proposed in 1988 [see Wells, G. L. (1988). *Eyewitness identification: A system handbook*. Toronto: Carswell Legal Publications]. The double-blind lineup is a straightforward attempt to adapt proven scientific methods to the collection and recording of eyewitness identification evidence. There is no reason to believe that case detectives, but not scientists and medical doctors, are immune to inadvertent influence over the people they test and the results they obtain. Part of what it means to make eyewitness identification evidence more scientific is to adopt the methods of science in collecting such evidence.

The need for double-blind lineup procedures is not restricted to the concern that the lineup administrator can steer witnesses away from fillers and toward the suspect. Extant published research shows that reactions of the lineup administrator to a witness’s choice lead witnesses to distort their recollections of their identification certainty, their recollections of how good their view was, their recollections of how much attention they paid during witnessing, and several other testimony-relevant judgments. This was first demonstrated in 1998 and is called the post-identification feedback effect [Wells, G. L. & Bradfield, A. L. (1998). “Good, you identified the suspect:” Feedback to eyewitnesses distorts their reports of the witnessing experience. *Journal of Applied Psychology*, 83, 360-376]. There are now 40 experimental tests from 25 published studies, representing 7,846 participant witnesses examining this consistent and robust phenomenon. In effect, witnesses who get feedback from a lineup administrator suggesting that their identification was correct tend to erroneously recall that they were certain all along, had a great view of the perpetrator during the witnessed event, and paid close attention during the witnessed event. The data clearly show these are distortions from the confirming feedback because witnesses who make the same identification without such feedback are much less certain, report a worse view, and report having paid less attention. This post-identification feedback effect is stronger for witnesses who are mistaken than it is for witnesses who made accurate identifications. This is not just a laboratory phenomenon; it also occurs with actual witnesses to serious crimes [Wright, D. B., & Skagerberg, E. M. (2007). Postidentification feedback affects real eyewitnesses. *Psychological Science*, 18, 172-178.] Moreover, research has shown that when lineup administrators were led (erroneously) to believe that the person the witness identified was the culprit, lineup administrators influenced the witness’s report of certainty (inflating it) even though the lineup administrators were given an explicit set of objective procedures to follow and were explicitly told to not deviate from the prescribed procedures [Garrioch, L. & Brimacombe, C. A. E. (2001). Lineup administrators' expectations: Their impact on eyewitness confidence. *Law and Human Behavior*, 25, 299-315].

The certainty of an eyewitness should be based on the witness’s own memory, not external sources. The best solution to the post-identification feedback effect phenomenon is to use double-blind lineup procedures and have the double-blind administrator take statements from the witness (especially regarding certainty) before the witness can receive feedback.

These statements would then be a matter of discoverable record.

**MB&L:** MB&L also noted “*legal issues created by the sequential procedure when the suspect is in the first position, since an identification means that the witness has essentially viewed a one-person array or with live lineups, a one-person show-up. These concerns remain unresolved. Sequential advocates continue to suggest that this criminal justice dilemma can be avoided by showing the witness the remaining photos in the photo array even though an identification has already been made. Such a procedure has not been studied, and its effects are unknown—that is, does the witness actually evaluate additional photographs after making an identification, or does the witness perceive this as a signal that his choice is “wrong,” or that the police do not trust his judgment.*”

**Comment:** The solution to this is simple and in place in the jurisdictions that have adopted sequential lineup procedures. As a part of the pre-lineup instructions to witnesses, they are told that the procedure requires that they be shown all the remaining lineup photos even if they make an identification. This prevents witnesses from making any inferences that showing the additional photos after making an identification implies that the identification was “wrong.” Moreover, when double-blind procedures are

used, witnesses are told before the lineup commences that the lineup administrator does not know which person in the lineup might be a suspect. Hence, they cannot infer anything from the lineup administrator's showing of the additional photos.

**MB&L:** *“what happens when witnesses gets [sic] to photograph number five or six and realize that they are running out of options?”*

**Comment:** This is a surprising comment from MB&L because they know very well that the sequential procedure uses “back-loading” to prevent the witness from knowing how many photos are to be viewed, so that witnesses do not know when they are getting to the end of the photos. Controlled studies show that back-loading the sequential eliminates order or position effects<sup>9</sup>. Furthermore, a field experiment with actual eyewitnesses in which the order of photos was randomly determined in a back-loaded sequential procedure showed no order effects at all<sup>10</sup>.

**MB&L:** *“The AJS study originally included four jurisdictions, but three of the four dropped out during the course of the study.”*

**Comment:** This sounds rather sinister. But no one “dropped out” of the AJS field experiment on simultaneous and sequential lineups. Charlotte, North Carolina ceased data collection because North Carolina passed a law that took effect soon after the study started requiring that all lineups in North Carolina be done sequentially, which meant that the simultaneous comparison conditions could not be run. San Diego and Tucson continued to participate up to the point at which the overall sample size (from all four jurisdictions together) was judged by the researchers to be sufficient to end data collection and analyze the results. It is true that there were technical problems with the San Diego and Tucson sites because of difficulties integrating their sources of photos with the software used on the laptops. Hence, their sample sizes were smaller than that of Austin, which did not have that difficulty. But that had nothing to do with the simultaneous versus sequential issue or the double-blind issue. Moreover, this was a true experiment with random assignment to simultaneous versus sequential *within* each jurisdiction. Hence, even if all the data came from one jurisdiction, it is a valid test of the simultaneous versus sequential difference. It seems relevant as well that the Austin Police Department, which collected most of the data, adopted double-blind sequential procedures after reviewing their own data.

**MB&L:** *“The protocols... [in the AJS study]... required witnesses be told that the lineup contains only one possible suspect, effectively prompting the witness. A witness who is told that there is only one right answer might squelch information about a second photo in the lineup, information that could reflect on the witness's reliability or add information to the investigation.”*

**Comment:** This is a strange criticism. I am not sure that “prompting the witness” means. Every witness knows there is a possible suspect in the lineup, otherwise why is the procedure being conducted? [Of course, the instructions explicitly state that the culprit might not be in the lineup.] The actual wording was “our lineups never contain more than one” possible suspect. The idea for this came from the police detectives in the participating departments and it turns out to be a very good idea. As they noted, a large percentage of their cases involve more than one culprit. Proper lineup procedures require that each suspect has their own lineup (one suspect embedded among fillers), but witnesses in multiple-culprit cases who spot one of the culprits often try to find the other one(s) in that same lineup. Best to let them know the truth; regardless of the number of culprits that were involved in the crime, no lineup contains more than one possible suspect.

<sup>9</sup> Horry, R., Palmer, M. and Brewer, N. (2012). Back-loading in the sequential lineup prevents within-lineup criterion shifts that undermine eyewitness identification performance. *Journal of Experimental Psychology: Applied*, 18(4), pp.346-360.

<sup>10</sup> Wells, G. L., Steblay, N. K., & Dysart, J. E. (2011). *A test of a simultaneous vs. sequential lineup method: An initial report of the AJS national eyewitness identification field studies*. American Judicature Society: Des Moines, IA.

**MB&L:** *“A number of the witnesses in the AJS study selected both a filler and the suspect as being familiar. The blind administrators were required to listen to the audio tape of the procedure and attempt to disambiguate whether the witness preferred a filler or the suspect. Police “disambiguation” of a witness’s identification is problematic for the criminal justice system, both at the investigative and trial stages ... if the witness’s decision is ambiguous, it is just that, ambiguous.”*

**Comment:** Yes, in a small percentage of cases witnesses selected more than one lineup member. This was equally true for the simultaneous and the sequential. Every experienced detective knows that this happens. *If* after listening to the audiotape it was ambiguous as to which the person the witness settled on, then it was not counted as an identification. But if the audiotape listener, blind as to which was a filler and which was the suspect, could clearly discern the preference, e.g., witness says “actually, I am now sure it is number four rather than number three”, then it was recorded as an identification of number four. It is the witness who is making the determination. This is what already happens in normal identification procedures. The difference in the AJS study is that the person making a record of which lineup member the witness settled on is blind as to which person is the suspect and which was a filler.

**MB&L:** *“...of those 855 photo lineups [in the AJS study], 358 lineups had to be eliminated because the procedures used did not fit the study protocols ... Of the 358 eliminated lineups, approximately 59 percent were rejected because a blind administrator was not used. That such a large number of lineups had to be excluded, without explanation as to why so many could not be conducted by a blind administrator, raises questions about the practical difficulty of implementing blind administrators.”*

**Comment:** Yes, slightly less than 25% of all the lineups in the AJS study (211 of the 855) were not conducted using a double-blind procedure. Hence, we did not include those data in our analyses. Does this raise questions about the practical difficulty of implementing blind administrators? In the case of the AJS study, the detectives were not under orders to use a blind administrator, but were simply encouraged to do so. A better way to gauge the difficulty of implementing blind identification procedures is to contact agencies that have been using double-blind procedures. The entire state of New Jersey has been doing so since 2002. Or check with North Carolina, Boston, Dallas, or Santa Clara County. We now have over a decade of actual police experience with double-blind, sequential line-ups from agencies throughout the country in every type of jurisdiction from major urban areas to small rural towns.

**MB&L:** *“Despite historical evidence that somewhere between 8 and 15 percent of accurate identifications are lost in the sequential procedure, the AJS study found that there was no loss of accurate identifications in the sequential procedure compared to the simultaneous procedure.”*

**Comment:** This is true. But the “historical evidence” is based on lab studies that used versions of the sequential procedure that are not the same as those used in jurisdictions that have adopted the sequential. The AJS report is very clear about this. For example, almost no lab studies of the sequential provide the “not sure” option, and lab studies do not permit the witness to go through the sequence again if they request it, and lab studies have not permitted witnesses to resolve multiple picks. These are improvements that agencies that have adopted the sequential procedure have put in place and these elements were included in the AJS study. Unlike the lab studies, the AJS study gives us a sense of how the data look from actual witnesses when using the sequential procedures that are used in actual practice. Of course, the AJS study is just one study. But it is the only study of actual eyewitnesses that used true random assignment to simultaneous versus sequential, used double-blind controls, and used a method (computer administration) to ensure that every identification decision made by witnesses was automatically recorded.

**MB&L:** *“Random assignment was a main protocol of the Illinois study [a study led and authored by Mecklenburg], and all three participating jurisdictions complied with this mandate.”*

**Comment:** This is, quite simply, false. And much criticism from eyewitness scientists has been directed at the Illinois study on this point. In both Chicago and in Joliet, one geographical area was assigned to do sequential procedures and another area assigned to do simultaneous procedures. That is not random assignment and it is not even close to random assignment. Any pre-existing differences between the two areas are confounded with the results. The only way such a design could be considered scientifically sound is if a pre-study base-line of lineup outcomes for the two geographical areas were compared and

found to be equal before the commencement of the study. And, the results in Joliet were very different than the results in Chicago. In Joliet the sequential produced results that were favorable to the sequential whereas in Chicago the results were not favorable to the sequential. Even more interesting is what happened in Evanston, the only site that might be said to have used a random assignment procedure. In Evanston the simultaneous versus sequential procedure was supposed to be done according to whether the case had an odd case number or an even case number. Technically, that is not random assignment, it is patterned assignment. Nevertheless, if followed faithfully, this every-other-one system should have worked out reasonably well. But, an independent re-analysis of which cases were assigned to simultaneous and which ones were assigned to sequential shows otherwise. In a detailed published analysis of the Evanston cases, Steblay found that the “tougher” cases (e.g., cross-race cases, longer delay from the witnessed event to the time of the crime) were more likely to be assigned to sequential conditions than to simultaneous conditions<sup>11</sup>. No one can seem to explain how that happened. I am not suggesting anything sinister, but somehow the every-other-case method failed because the assignment to simultaneous to sequential procedures in Evanston turned out to not be a level playing ground.

### **Archival Data Relevant to the Criterion Question**

Clearly, the question of whether to adopt sequential versus simultaneous lineup is a policy decision. On that point I agree with MB&L. Many jurisdictions have adopted the sequential procedure and used it for many years. The question of whether to switch to a sequential procedure depends at least in part on whether one thinks that the criteria that witnesses use to make identification decisions are too low. Some consider the DNA exoneration cases to be evidence that witnesses’ criteria are too low for making an identification. But there is another type of data that has been accumulating, namely archival analyses of eyewitness identification decisions in actual lineups.

Archival studies of lineups use police files to extract information regarding the outcome of lineups that were conducted in ongoing cases. Unlike lab experiments, where it is known with certainty whether the lineup’s suspect is the culprit or not, archival studies cannot definitively classify the identification of a suspect as an accurate identification. Nevertheless, when an eyewitness identifies a known-innocent filler, it can be classified as an error. In this sense, archival studies are able to calculate something quite important, namely how often do witnesses identify known-innocent fillers in actual cases? There are now eight published studies from the United States and the United Kingdom from which we can extract such estimates. The most recent of these analyzed over 1,000 lineups and found that 40% of witnesses who made an identification identified an innocent filler (Horry, et al., in press). The 40% figure is a bit high compared to the average across the eight published archival studies, but not by much. Data for the eight studies are shown in Table 1.

These archival analyses of lineups in ongoing investigations show that an average of seven of every 10 (70%) of witnesses make an identification from a lineup. In and of itself, that does not tell us much. However, among those 70% who made an identification, one out of every three (33%) identified a known-innocent filler from the lineup<sup>12</sup>. What are we to make of the fact that one of every three witnesses who identify someone from a lineup in actual cases made a mistake? And, we have to keep in mind that the actual rate of mistakes has to be higher than 33% because some unknown percentage of the identifications of suspects will also be mistaken.

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<sup>11</sup> Steblay, N. K. (2011). What we know now: The Evanston Illinois field lineups. *Law and Human Behavior*, 35, 1-12.

<sup>12</sup> In the AJS field study, 42% of those who made an identification identified a filler when the simultaneous procedure was used and 31% identified a filler when the sequential procedure was used.

Table 1: Identification Outcomes for the Eight Published Archival Studies of Lineups<sup>13</sup>

Author	% making an ID	% of IDs that are of the suspect	% of IDs that are of a known-innocent filler
Behrman & Davey (2001)	74%	68%	32%
Behrman & Richards (2005)	67%	78%	22%
Horry et al (2012)	65%	60%	40%
Horry et al (in press)	64%	72%	28%
Memon et al (2011)	86%	51%	49%
Valentine et al (2003)	62%	66%	34%
Wright & McDaid (1996)	59%	66%	34%
Wright & Skagerberg (2007)	79%	73%	27%
<i>Average across studies</i>	<b>70%</b>	<b>67%</b>	<b>33%</b>

It could be argued that the 33% figure is quite alarming and indicates that witnesses are using a rather loose criterion for making an identification from a lineup. Although fillers will not be charged with a crime, these data are useful in assessing the propensities for witnesses to make mistakes. After all, the witnesses who identified a filler could have made no identification instead of identifying a known-innocent person from the lineup. Moreover, any given filler could have happened to be an innocent suspect in these cases. Others might not be shocked by these data and continue to believe that witnesses are doing fine without the need for new procedures. That is part of the policy dilemma. But policy makers need to consider these archival data, which have not been a part of the discussion up to this point.

### Final Remarks

In this commentary I tried to counter some of what I consider to be incomplete or misleading aspects of the of the MB&L article. But neither the MB&L article nor the current commentary should be the foundation for jurisdictions to decide on the policies and procedures they adopt for eyewitness identification. I would be surprised (and somewhat disappointed) if law enforcement based their important policy decisions on what I say or what the three prosecutors (Mecklenburg, et al.) say. Instead, the foundation for policies and procedures should involve a combination of reading the laboratory scientific literature (especially meta-analyses), examining the methods and results of field experiments and archival studies, and checking with jurisdictions that have now had considerable experience with sequential and double-blind procedures.

<sup>13</sup> Behrman, B.W., & Davey, S.L. (2001). Eyewitness identification in actual criminal cases: An archival analysis. *Law and Human Behavior*, 25, 475-491; Behrman, B. W. & Richards, R. E. (2005). Suspect/foil identification in actual crimes and in the laboratory: A reality monitoring analysis. *Law and Human Behavior*, 29, 279-301; Horry, R., Halford, P., Brewer, N, Milne, R., & Bull, R. (in press). Archival analyses of eyewitness identification test outcomes: What can they tell us about eyewitness memory? *Law and Human Behavior*, in press; Horry, R., Memon, A., Wright, D. B., & Milne, R. (2012). Predictors of eyewitness identification decisions from video lineups in England: A field Study. *Law and Human Behavior*, 36, 257-265; Memon, A., Havard, C., Clifford, B., Gabbert, F., Watt, M. (2011). A field evaluation of the VIPER system: A new technique for eliciting eyewitness evidence. *Psychology, Crime, & Law*, 17, 711-729; Valentine, T., Pickering, A., & Darling, S. (2003). Characteristics of eyewitness identification that predict the outcome of real lineups. *Applied Cognitive Psychology*, 17, 969-993; Wright, D.B., & McDaid, A.T. (1996). Comparing system and estimator variables using data from real lineups. *Applied Cognitive Psychology*, 10, 75-84; Wright, D. B. & Skagerberg, E. M. (2007). Post-identification feedback affects real eyewitnesses. *Psychological Science*, 18, 172-178.