



## MEMORANDUM

**TO:** Chief of Police Greg Tabor

**FROM:** Sergeant Robert McKinney

**DATE:** November 8, 2013

**SUBJECT:** A Proposal to Amend Police Department Policy: Criminal Investigations 42.1.1

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### **1. Introduction**

What role does law enforcement play in wrongful convictions? If the way we conduct investigations significantly contributes to wrongful convictions can we make a positive impact on this problem? How widespread are incidents of wrongful convictions? We should all agree that even one wrongful conviction is too many, but this moral reflection does little to quantify the problem. The Innocence Project, a group of attorneys who work pro-bono to free the wrongly convicted, published statistics in their 2011 report. This group proved the innocence of 292 convicted and incarcerated individuals in the United States between 1987 and 2012. These exonerations included 17 people who had been sentenced to death. The average amount of time these 292 people spent in prison was 13 years (The Innocence Project, 2011). The Innocence Project is mentioned here because the death row exonerations highlight the ultimate importance and necessity of conducting credible and ethical investigations that reveal the true facts.

The National Registry of Exoneration collects and publishes perhaps the most comprehensive data on wrongful conviction exonerations. The National Registry of Exoneration is a joint project of the Michigan School of Law and Northwestern University Law School. The registry provides detailed information on all known serious crime exonerations in the United States since 1989. There were 1,228 confirmed exonerations as of October 9, 2013. The registry data is broken down by several different categories including state and county. Arkansas was listed as having two exonerations. They occurred in Pulaski and Clark counties. The statistical data represented by the registry includes exonerations occurring between 1989 and December 2012. The data

was presented as follows. There were 1050 exonerations. 47% of those had been convicted of murder and 33% were rape convictions. The average amount of time the wrongfully convicted spent in prison was 10 years.

The most significant contributing factor in 41% of the total wrongful conviction cases was eyewitness misidentification. Eyewitness misidentification was the most significant contributing factor in 79% of the wrongful convictions related to sexual assaults involving adult victims and in 86% of the wrongful convictions for robbery. The incidents of eyewitness misidentification were the single most common factor in wrongful convictions (The National Registry of Exonerations, 2013). Research has identified volumes of literature containing expert opinions expressing the collective knowledge obtained through years of firsthand experience and scientific research related to eyewitness identification. This research brought to light a common trend in eyewitness misidentification. In many cases, police officers interacted with eyewitnesses in a manner that was counterproductive and detrimental to preserving the human memory and revealing the truth. Significant miss steps occurring during the presentation of photographic lineups can have a catastrophic effect on reliability and validity of eyewitness testimony. Reckless, and in some cases malicious, conduct by police officers can serve to initiate unconscious memory transference for a witness. Unconscious memory transference resulting from the mishandling of eyewitnesses by police officers has caused wrongful convictions (Dunning, page 918).

Unconscious memory transference will be explained later in this proposal.

Strict protocols based on science must be utilized during the presentation of photographic lineups. Does our organization have sufficient policy safeguards in place to mitigate this problem at our level? In my opinion we do not. Are there simple, yet effective, modifications based upon this collective professional knowledge we can make to our protocols that will better serve us in discovering the facts? I believe there are. First, a study of our current department policy related to eyewitness identification is necessary.

## **2. Fayetteville Police Department Policy 42.1.1**

The Fayetteville Police Department maintains a policy, which addresses criminal investigations and provides guidelines for interacting with witnesses and conducting photographic lineups. The policy is 42.1.1 Section II. B. 7 and 8 specifically (See Appendix). In regards to photographic lineups, the policy requires a minimum of six individual photographs. Only one of the photographs will be of the suspect and all of the photographs must be of individuals with physical characteristics similar to the suspect. The photographs used in the lineup should all be either color or black and white and never a mixture of the two. The policy does not *require* the photographic lineup presentation to be video or audio recorded, instead the policy suggests that

recording should be utilized if possible. If the same photographic line up is shown to multiple witnesses, the witnesses *should* be separated before they look at the line up and during. The policy outlines some information the officer *should* share with the witness prior to viewing the line up. Witnesses are to be informed that the correct offender may or may not be represented in the lineup, they can take as much time as they need, and finally, they are not required to make an identification. The policy prohibits officers from indicating in anyway which photograph represents the actual suspected offender.

The policy also provides guidelines for “field identifications”, sometimes referred to in our profession as a “show up”. Subsection 8 outlines this procedure. The requirements and suggestions are very similar to those regarding photographic lineups spelled out in subsection 7. The policy admonishes officers to avoid utilizing this technique, if possible, due to its “inherent suggestiveness.” None-the-less, guidelines are provided. The policy *suggests* the identification attempt be video or audio recorded. The witness should be transported to the location of the suspect in a police vehicle. Witnesses should be separated and view the suspect individually. Officers *should* advise the witness that the subject being viewed may not be the offender and there is no requirement to make identification. Officers are prohibited from indicating the identity of the subject.

### **3. Policy Deficiencies that Could Contribute to Wrongful Convictions**

The purpose of this proposal is to present suggestions for correcting (what I perceive as) deficiencies in the department policy establishing protocols for photographic lineups. My intention is to point out the perceived deficiencies and what I believe to be the needed corrections. The remainder of the proposal will present information supporting my positions. The deficiencies are listed as follows:

- 1) The policy does not indicate whether officers will utilize a photographic lineup containing six photographs that are presented to the witness simultaneously or in a sequential manner (eyewitness identification reforms based on scientific research that are sweeping the law enforcement profession nationwide have established the sequential manner as the best practice for preventing misidentifications).
- 2) The policy does not require the photographic lineup presentation to be “double blind” (a “double blind” photographic lineup presentation consists of a police officer who is not involved with the

investigation, *thus subsequently unaware of which photograph represents the suspect*, being the department representative who presents the photographic lineup to the witness).

- 3) The policy language should not merely suggest the photographic lineup presentation be video or audio recorded it should require it.
- 4) The policy does not prohibit the officer presenting the line up from indicating to the witness if the “correct” subject was identified (this is imperative for the prevention of unconscious memory transference).
- 5) The policy does not require the documentation and preservation of confidence statements made by the witness during the identification process.

A well-known tenet of leadership warns the prudent that complaints brought to the attention of superiors should be accompanied by solutions. I will explain why we should be concerned with each deficiency by presenting facts established by scientific research. I will also provide solutions for the policy deficiencies that have been developed by personnel with qualified training, experience, and education relative to the topic. Simultaneous versus sequential photographic lineup presentation will be discussed first.

#### **4. The Superior Reliability of the Sequential Photographic Lineup**

During the past thirty years, a significant effort has been invested in the attempt to improve law enforcement’s handling of eyewitnesses. The effort has been a collaboration of law enforcement personnel, prosecutors, judges, defense attorneys, legislative bodies, universities, criminal justice institutions, psychologists, and sociologists. Numerous studies have been commissioned and conducted. When I read the body of research, it was clear how a better understanding of the human memory, and how it relates to the traditional methods of criminal investigation, has emerged slowly over the years. In 2006 an eyewitness field study meeting was held in Greensboro, NC. Professionals from the field of law enforcement attended as well as scientists from around the country who were experts in eyewitness identification. This meeting culminated with the agreement to conduct another study on improving photographic lineup protocols. After the meeting, a partnership was established that included The American Judicature Society, The Innocence Project, The Police

Foundation in Washington D.C., the Center for Problem-Oriented Policing and numerous social scientists (Wells, page 4). Gary L. Wells Ph.D., of Iowa State University's Center for Forensic Science & Public Policy, Nancy K. Steblay Ph.D., of Augsburg College, and Jennifer E. Dysart Ph.D., of John Jay College of Criminal Justice, conducted the study. What they learned would come to be known as "The Greensboro Protocols" (Wells, page 1).

For decades, law enforcement agencies have utilized the traditional method of presenting a photographic lineup that consisted of six or eight photographs to witnesses arrayed in such a manner as to be viewed simultaneously side by side. The suspected offender would be depicted in only one of the photographs. The scientific community has long known this method was flawed and would produce misidentifications consistently. It was not until the 1990s that the criminal justice system began to seriously take notice (due to the death row exonerations) and seek out more reliable methods (Wells page 1). Simultaneous photographic lineups are fundamentally flawed when an understanding of how the human mind functions in relation to the memory recall and decision making process. Numerous studies prior to "Greensboro" exposed and explained the flaw. The flaw is based on the principle of "relative judgment." A relative judgment occurs when eyewitnesses compare the appearance of the individuals depicted in the photographic lineup to *each other* and then attempt to compare them to a memory of the perpetrator. Through a process of decision making the eyewitness then identifies the photograph that *looks the most like* their memory of the perpetrator. A core finding in laboratory studies that is reliable and reproducible is referred to as removal-without-replacement effect. This experiment proved that a simultaneous presentation of the photographic lineup causes eyewitnesses to choose the wrong subject because someone in the array will always *look more like the memory of the perpetrator* than the others. Removing the known perpetrator's photograph from the array proved this concept. Many eyewitnesses who would have picked the perpetrator's photograph prior to removal moved on to a filler photograph and made an identification. This occurred even after eyewitnesses understood the lineup might not contain a photograph of the actual perpetrator (Wells, page 2). A "filler" photograph refers to a photograph of an uninvolved (innocent) person that is included in the array to complete the required number of photographs.

A sequential photographic lineup contains six photographs where only one is a photograph of the suspected perpetrator. The eyewitness views the photographs one at a time and must make a judgment decision prior to moving on to the next photograph. This prevents the eyewitness from comparing the photographs to each other and only permits a comparison to his or her memory of the perpetrator. This forces the eyewitness to make an "absolute judgment" on each photograph prior to viewing another. The eyewitness is required to view the remaining photographs even after identification is made. Many studies support the conclusion that

sequential photographic lineups reduce mistaken identifications by 22%. It is also believed that sequential photographic lineups may reduce the identification of the actual perpetrator by 8%. For clarification, the 8% figure represents incidents where the eyewitness viewed the lineup and did not make any identification (Wells, page 2).

The “Greensboro” study involved actual cases and actual investigations conducted by the Charlotte-Mecklenburg Police Department (North Carolina), the Tucson Police Department (Arizona), San Diego Police Department (California), and the Austin Police Department (Texas). There were 497 total cases involved in the study. Cases where the victim / eyewitness had a prior relationship or acquaintance with the perpetrator were not included in the study (Wells, page 2). The study produced clear results. When presented with a simultaneous photographic lineup, eyewitnesses chose filler photographs (innocent persons) 18.1% of the time. When presented with a sequential photographic lineup, eyewitnesses chose filler photographs (innocent person) 12.2% of the time. No identifications were made utilizing the simultaneous method in 56.4% of the cases. No identifications were made utilizing the sequential method in 60.5% of the cases. In every instance the lineup presentations were conducted utilizing the double blind method (Wells, page 13). The “Greensboro” study established the superior reliability of the sequential presentation method for reducing misidentifications. A key component stressed in Dr. Wells report on the “Greensboro” study was the imperativeness for the photographic lineup presentations to be conducted utilizing the double blind method.

## 5. Double Blind Presentation Method

The implementation of a policy requirement to require the double blind presentation method for photographic lineups is imperative. A double blind photographic lineup presentation simply means that the police investigator presenting the lineup to the eyewitness *does not know which photograph represents the suspect*. Why is this so important? Decades of social psychological research regarding the effects of experimenter expectancy have clearly established the ability of a test administrator to influence the choice of test subjects (Berry). Simply put, the eyewitness viewing the photo array will be influenced by their interaction with the presenter.

“Expectancy effects refer to the phenomenon whereby one’s beliefs or expectations about another person elicit behavioral confirmation of those initial beliefs. That is, one may behave in such a way that causes another

person to behave in accordance with one's expectations, often resulting in a strengthening of one's initial beliefs (irrespective of their objective veracity)" (Berry).

Robert Rosenthal conducted the first study of experimenter expectancy. The study tasked two groups of students with conducting research about facial expressions. Interaction between Rosenthal and the students was calculated to influence the results. Both groups were given identical circumstances and instructions for the experiments. One group was influenced to view their results as "successful" the other group was influenced to view their results as "unsuccessful". The subjects providing the facial expressions were independent and were not aware of the experiment. The group expecting to receive higher ratings of success did obtain significantly higher ratings of success even though the experiments were identical.

A famous experimenter expectancy study, the Pygmalion Experiment, involved elementary school students and test scores. Teachers at the school were not aware of the study. Students were giving a faux test to determine emerging intelligence. Based upon the "results" of this faux test, the children were divided into two groups. The first group was labeled as "blooming" with emerging superior intelligence. The second group was labeled as normal. Teachers were alerted as to whom the students were that should show superior gains over the school year. A second test at the end of the year demonstrated that the group labeled as superior did, in fact, measure significantly higher test scores. The only difference between the two groups was the expectations of the teachers. People conducting experiments can influence the decisions of participants in many ways. This is also true for police officers presenting photographic lineups to eyewitnesses. Body language exhibited by the police officer, as well as other types of paralinguistic cues, and verbal reinforcements of responses desired by the officer serve to influence eyewitnesses (Berry). During a double blind photographic lineup presentation, the police officer *has no expectations*. Thus, he or she should not display any of these influential characteristics.

Several groups have conducted studies of double blind photographic lineup presentations. They studies referenced here will include the Phillips Study, The Greathouse and Kovera Study, and work performed by Dr. Gary L. Wells. Police officers presenting photographic lineups were also studied and a surprisingly consistent pattern of behavior was documented when police officers knew the identity of the suspect (so called single blind photo graphic lineups). In research conducted by Dr. Wells, police officers were observed influencing eyewitnesses in the following manners. Some officers would "steer" witnesses toward the photograph of the suspect the officer believed was the actual offender. Many times, a witness would begin to vocalize that they were considering the suspect's photograph and one other "filler" (innocent person) photograph, but was having

difficulty making a decision. The police officer would ask questions about how the suspect's photograph matched the eyewitness's memory, yet the officer would not ask questions regarding the filler photograph. In another example, an eyewitness may begin discussing how they are growing to believe a filler photograph represents the suspect. Recognizing this, the police officer encourages the eyewitness to take their time and choose carefully (Berry).

In the Phillips Study, during the presentation of photographic lineups where the police officer knew which photograph represented the "correct" suspect, the incidence of filler photographs (innocent person) being identified increased by 56%. Single blind photographic line up presentations demonstrated enhanced vulnerability when combined with simultaneous photograph presentations. During photographic lineup presentations where *no suspect photos were present*, eyewitnesses were 76% more likely to identify a photograph during single blind simultaneous photographic lineup presentations when compared to double blind sequential presentations. The Phillips Study also considered how high and low contact between the police officer and eyewitness during the presentation influenced the identification results. High contact situations were defined as the police officers setting very close to the eyewitness such as directly in front of or beside the witness. Low contact situations were defined as the police officer setting at the other end of a long table, behind the witness, or leaving the room. High contact situations yielded higher incidents of expectation influence (Berry).

It is very important for law enforcement to recognize the importance of maintaining an objective photographic lineup presenter. Consider that these studies have also identified the ability of the double blind presenter to be influenced by the choices (identifications) of witnesses when the same photographic lineup is being presented to multiple witnesses and the same photograph is being consistently identified. In this scenario, the presenter is influenced to form an opinion about the correctness (guilt) of the person depicted in the consistently chosen photograph. The presenter loses his or her objectivity and may begin to unconsciously or purposefully influence the choices of future witnesses. For this reason, when multiple witnesses are being shown a lineup that contains the same "suspect" photograph multiple objective presenters should be utilized (Berry).

The science supporting experimenter expectancy is so widely accepted numerous jurisdictions have made double blind photographic lineup presentations mandatory. These jurisdictions include every law enforcement agency in New Jersey and North Carolina, 200 agencies in Wisconsin, Denver Police Department, Boston Police Department, Virginia Beach Police Department, Dallas Police Department, seven other Texas police departments, every law enforcement agency in Suffolk County, Massachusetts, and the Wisconsin Attorney General formally recommended double blind lineup presentations be adopted statewide (Gaertner).

Whether or not administrators chose to implement sequential photographic lineup presentations, it is imperative (and relatively cost free) that double blind line up procedures be made a requirement. Eyewitness identification from the witness stand is still arguably one of the most powerful pieces of evidence that can be brought before a jury. This is the single most important reason that double blind photographic lineup presentations are of utmost importance. The validity and credibility of the eyewitness's memory must be safeguarded and preserved. Strict protocols on the behavior of the presenters, as well as their allowable statements, and positioning relative to the witness during the lineup presentations are necessary to insure the prevention of unconscious memory transference.

## **6. Unconscious Memory Transference**

The potential impact of statements made by police officers *while* eyewitnesses are viewing the line up has been established. The influence of high or low contact positioning relative to the police officer and eyewitnesses was also discussed. We all understand that an eyewitness misidentification during a photographic line up with a police officer can establish probable cause for the arrest of an innocent person. Once the person is arrested and charged a day will come where the eyewitness will be asked to identify the suspect, now a defendant on trial, from the witness stand in front of a jury. Consider what happens when an eyewitness has been unduly influenced by high contact with the police officer presenting the photographic lineup, influential statements made by the police officer presenting the photographic lineup who knows which photograph is suspected to be the "correct" suspect, and the deficiencies of a simultaneous photographic line up all working together to affect a misidentification by the eyewitness. Now, compound these mistakes with one more. After the eyewitness selects a photograph and identifies it as a depiction of the person he or she witnessed committing the crime, the police officer presenting the photographic lineup tells the eyewitness whether or not they identified the "correct" suspect. An eyewitness who mistakenly identifies a person developed by the police as a suspect in a crime and then has that flawed identification reinforced by the police will suffer from unconscious memory transference. The subconscious mind of the eyewitness will transfer (replace) the features and characteristics of the person mistakenly identified depicted in the photographic lineup with their true memory of the actual suspect. Later, during trial, when asked to identify the defendant from the witness stand the eyewitness will "remember" and visualize the features and characteristics of the misidentified photograph in the context of the crime and perform "courtroom identification". The police officer presenting the photographic lineup should be strictly prohibited from indicating in anyway the results of the identification to the eyewitness. Obviously, if a double blind procedure is being utilized this would be impossible.

Unconscious memory transference is defined as an instance where an eyewitness will confuse a familiar but innocent person with an actual perpetrator. Three theories of unconscious transference were discussed in an article authored by David F. Ross, Stephen Ceci, David Dunning, and Michael Toggia that was published in the *Journal of Applied Psychology* Volume 79 in 1994. Ross et al. explored automatic processing, deliberate and conscious source monitoring at retrieval, and conscious inference at encoding. Automatic processing helps to explain how an eyewitness could observe a perpetrator commit a crime, then mistakenly identify a photograph from a lineup under less than ideal conditions, and months later subsequently identify the wrong (innocent) person in court and actually believe (and remember mistakenly) that the innocent person was the perpetrator. Automatic processing serves as a memory retrieval tool. It encodes everyday experiences for our mind as it relates to spatial location (the features of the face), temporal sequence, and the frequency with which events occur. The human memory will express a preference for shapes the observer encountered previously when accessed. The study of automatic processing revealed that past experiences could influence memory without having a conscious awareness of the past experience (such as replacing the original memory of a perpetrator's physical characteristics) (Dunning et al., page 920). Deliberate and conscious source monitoring at retrieval is related to reality-monitoring theory. Simply put, the quality of a memory is subject to how the memory was formed. The memory of a personal experience is based upon information collected by the five senses. Memories of fantasy are based on reasoning and thought process. It is believed that it is more difficult to distinguish between two memories that come from the same source (reality compared to reality versus fantasy compared to fantasy). Conversely, it is *easier* to make a choice between two memories when they were produced by different sources (Dunning et al., page 920). For our purposes, the eyewitness on the stand is sourcing the memory of the crime *and* the fantasy memory recalls he or she has experienced about the crime *after experiencing the photographic lineup presentation and replacing (transferring) the features of the innocent person to his or her memory of the crime*. Conscious inference at encoding could occur when the eyewitness is asked to make the in court identification. The mistakenly identified defendant looks familiar to the eyewitness because the eyewitness was exposed to the defendant's features during the photographic lineup. The eyewitness knows he looks familiar, and the idea that he was the perpetrator was reinforced during less than ideal circumstances at the photographic lineup. The eyewitness accesses his memory of the crime and his memory of the actual perpetrator during the in court identification. Due to the similar appearance of the actual perpetrator to the wrongfully identified innocent defendant the memory of the perpetrator serves as a retrieval tool for the memory of the innocent defendant established during the photographic lineup. The eyewitness

misperceives the memory of the photographic lineup and makes an erroneous inference that they are the same person (Dunning et al., page 921).

Requiring a double blind photographic lineup procedure will guarantee our investigation does not contribute to memory transference. Officers should be strictly prohibited from disclosing the results of the photographic lineup identification to any eyewitnesses.

## **7. Recording the Photographic Lineup Presentation and Documenting Confidence Statements**

Determining if statements made by an eyewitness during the presentation of a photographic lineup constitute identification is an issue for the trier of fact (*Bishop v. State of Arkansas*, *Monk v. State of Arkansas*). It is our duty as objective investigators seeking the truth to preserve those statements via audio and / or video recording for presentation to the court. Audio and / video recordings may be the best evidence of actual statements made by eyewitnesses. Police officers presenting photographic lineups should attempt to obtain confidence statements from eyewitnesses making identifications. Statements such as “could be him”, “might be him”, “I think so”, “I am pretty sure”, “That is the guy”, “100 percent that is him”, are all evidence representing the degree of certainty expressed by the eyewitness. When an eyewitness verbalizes a vague or ambiguous identification it is necessary and prudent to seek clarification. Consider the burden enjoined to the trier of fact when left with the prospect of weighing imprecise evidentiary statements.

The ability to present factual and accurate documentation of the photographic lineup presentation to the court accompanied by qualified eyewitness determinations is invaluable. It preempts questions and forestalls the ability of parties invested in influencing adjudications from obscuring the truth. The implementation of this policy requirement would be cost free. The interview rooms at the police department are already equipped with audio and video equipment. Police officers recorded interviews on a daily basis at the police department. Department investigators, supervisors, and collision reconstruction personnel are already issued digital recorders that could be utilized when photographic lineup presentations occur in the field. This is currently a common practice would require little additional training. It would be necessary to establish a script for police officers to follow when presenting photographic lineups. A script approved by the prosecuting attorney’s office would insure the instructions given to eyewitnesses were legal and consistent with the Department of Justice Guidelines for presenting photographic lineups.

## 8. Photographic Lineup Instruction Protocol

The U.S. Department of Justice Eyewitness Evidence Guide for Law Enforcement provides instruction guidelines for law enforcement officers to follow when preparing eyewitnesses to view simultaneous and sequential photographic lineups. The guidelines for the **simultaneous photographic lineup instructions** are as follows:

1. Instruct the witness that he/she will be asked to view a set of photographs
2. Instruct the witness that it is just as important to clear innocent persons from suspicion as to identify guilty parties.
3. Instruct the witness that individuals depicted in lineup photos may not appear exactly as they did on the date of the incident because features such as head and facial hair are subject to change.
4. Instruct the witness that the person who committed the crime may or may not be in the set of photographs being presented.
5. Assure the witness that regardless of whether an identification is made, the police will continue to investigate the incident.
6. Instruct the witness that the procedure requires the investigator to ask the witness to state, in his/her own words, how certain he/she is of any identification. (U.S. Department of Justice, page 33)

The guidelines for the **sequential photographic line instructions** are as follows:

1. Provide viewing instructions to the witness as outlined above. Provide the following *additional* viewing instructions to the witness:
2. Individual photographs will be viewed *one at a time*.
3. The photos are in random order.
4. Take as much time as needed in making a decision about each photo before moving to the next one.
5. All photos will be shown, even if a identification is made; *or* the procedure will be stopped at the point of an identification (consistent with jurisdictional/departmental procedures).
6. Confirm that the witness understands the nature of the sequential procedure.

(U.S. Department of Justice page 34)

## 9. Conclusion and Recommendations (Solutions)

This work has attempted to reveal what I believe to be deficiencies with Fayetteville Police Department Policy “Criminal Investigations 42.1.1”. The deficiencies were previously stated and were accompanied by references to scientific research explaining why these areas were considered insufficient and some statistical data concerning the causes and prevalence of wrongful convictions. In review, the deficiencies discussed in this proposal were the lack of a policy requirement to utilize double blind photographic lineup presentations, the lack of a policy requirement to audio and or video record the presentation of photographic lineups, the lack of a policy requirement for officers to obtain confidence statements from eyewitnesses about their level of certainty when making an identification from a photographic lineup, and the lack of a strict policy prohibiting officers from revealing the results of an identification from a photographic lineup presentation to the eyewitness making the identification. The proposal also invested effort in an attempt to convince the reader that utilizing sequential photographic lineups would lessen the likelihood an eyewitness would make a mistaken identification.

Correcting these policy deficiencies would be virtually cost free and would significantly decrease the likelihood that our department would play a role in a wrongful conviction related to an eyewitness misidentification during a photographic lineup presentation. The single most important policy change to be implemented is the requirement to utilize double blind photographic lineup presentations. Research has proven that during single blind photographic lineup presentations the eyewitness was 56% more likely to mistakenly identify a filler (innocent person) photograph. When single blind simultaneous photographic lineups and double blind sequential photographic lineups were directly compared, eyewitnesses were 76% more likely to misidentify a filler (innocent person) photograph when participating in a single blind simultaneous photographic lineup presentation (Berry, 2012). If I could only choose one policy change to implement it would be the requirement to utilize double blind photographic lineup procedures. The double blind protocol is already mandatory in two states, exclusively adopted by numerous large and progressive police departments nationwide, and endorsed by The Innocence Project. The phenomenon of memory transference was touched on while making the argument for a policy prohibiting officers from disclosing to the eyewitnesses whether or not they had identified the “correct” suspect while viewing the photographic lineup. This prohibition is necessary for preserving the credibility and validity of the witness’s memory for in court identification at trial. Finally, I pointed out the necessity of a requirement for audio and or video recording the photographic lineup presentation and asking follow up questions after an identification in order to qualify the eyewitness’s level of certainty. These changes are imperative, necessary, and in line with the high ethical standards of our profession.

## 10. References

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Appendix