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Steven E. Clark

Eyewitness Identification: California Reform Redux

EXECUTIVE SUMMARY

The link between false eyewitness identification and false convictions of the innocent has motivated a national movement to reform the police procedures that are used to obtain eyewitness evidence as well as the legal procedures that regulate the use of that evidence. The reforms include recommendations that police avoid using “single-suspect showup identification” procedures in favor of lineups that include a minimum of five “known-innocent fillers” who match a description of the perpetrator; that police instruct the witness that the perpetrator may not be present in the identification procedure, that the witness is not required to make an identification, and that the investigation will not stop based on the witness’s response; that lineups should be presented sequentially by a blind administrator; that police immediately obtain a statement of confidence from the witness; and that all procedures be video recorded. California appears to have lagged behind and to have resisted reforms that have been adopted in other states. However, new social science data, theory, and analysis have changed the research landscape, suggesting that the reforms that have been adopted in California were on solid scientific footing whereas some of the reforms that California resisted were indeed on shaky ground. As the new research evolves, it is useful to reconsider eyewitness reform in California and to develop a framework for future policy improvements

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Introduction and Background

In 1996, the National Institute of Justice released a report that examined 28 cases of innocent people who had been convicted of crimes they did not commit (Connors, Lundregan, Miller, & McEwen, 1996). The proof of their innocence was established through what was then a nascent technology, DNA evidence. In 23 of those 28 cases, the original, false conviction had been obtained through mistaken eyewitness identification. The report seemingly proved what social scientists and legal scholars had been saying for nearly one hundred years: Eyewitnesses make mistakes that send innocent people to prison.

Something had to be done. Within a few years, state governments and local law enforcement agencies began changing the police procedures used to obtain eyewitness identification evidence and the legal procedures that regulate the use of that evidence in the justice system. The reform movement has gathered considerable momentum, “like a runaway train,” (Wells, quoted in Hansen, 2012). As of this writing, several states, counties, and police departments have adopted the reforms.

California, despite its reputation as a trend-setting, progressive state, has lagged behind in this national reform movement. California adopted some reforms but resisted many others. This *Policy Matters* article re-examines the reform efforts in California in light of new social science data, theory, and analysis. The new research strongly suggests that the reforms that California *did* adopt were backed by solid social science research, and some of the reforms that it resisted were indeed on shaky ground. Still, the time is ripe to reconsider the future of eyewitness ID reform in California.

This article begins with an overview of eyewitness identification procedures and the body of research that has provided the footing for the reform movement. The second section provides a brief overview of the reform movement, both nationally, and specifically for California. The third section applies the new research in evaluating the reforms. The fourth and final section describes broad recommendations to strengthen the links between social science and policy to guide eyewitness policy going forward.

Eyewitness Identification Procedures

There are two main techniques for obtaining eyewitness identification evidence. In the simplest procedure, often called a one-person showup, the witness is presented with a single suspect and is asked, “Is this the person that you saw?” In the other

procedure the witness is presented with a lineup consisting of a single suspect, plus some number of other individuals, often referred to as fillers, who are known to be innocent. The structure of the lineup is similar to that of a multiple-choice question, except that the correct answer is unknown. The authorities *suspect* that a particular individual in the lineup committed the crime, but they do not know that with certainty—which is precisely why they are asking the witness.

The DNA exoneration cases (of which there are now over 300 in the U.S.) highlight the important point that an identification of the suspect is not necessarily an identification of the perpetrator. I will use the term *correct identification* to refer to the identification of a suspect who is guilty and the term *false identification* to refer to the identification of a suspect who is innocent. The exoneration cases provide clear evidence that eyewitnesses make errors that lead to convictions of the innocent, but real-world criminal cases are limited in terms of what they can tell us about why eyewitnesses make mistakes or how to prevent those mistakes. The reason is simple. Consider the case of Frederick Daye, a San Diego man who was identified twice by the victim of a sexual assault. A researcher back in 1984 would almost certainly have scored the “data” as a correct identification. Only 10 years later would it become clear that Daye was innocent. This uncertainty regarding the guilt of any suspect lead researchers into the psychological laboratory to better understand why eyewitnesses make mistakes and what can be done to prevent those mistakes.

In a typical eyewitness identification experiment, the participants are presented with a staged crime, conducted live or presented on video and are later asked to make an identification decision. Because the crime is staged, the identity of the perpetrator—a confederate of the researcher—is known to a certainty. This allows researchers to know which suspect identifications are correct identifications of the “guilty” and which are false identifications of the “innocent.”

Eyewitness Identification Reform

Eyewitness research and reform have always been interconnected starting with the publication of Hugo Munsterberg’s classic book *On the Witness Stand* (1908). Legal reforms began in the U.S. in 1967 with three U.S. Supreme Court decisions (handed down on the same day) that considered conditions under which eyewitness identification procedures could be so suggestive that the identification evidence should not be presented

to the jury at trial. However, these decisions, and several decisions that followed in the 1970's, did little to change the police procedures or increase the accuracy of eyewitness identification evidence.

The modern reform movement arguably began in 1996, the year that the NIJ released its DNA exoneration report and also the year that the American Psychology – Law Society appointed a committee to draft guidelines for eyewitness identification procedures. These guidelines were published in 1998 (Wells, Small, Penrod, Malpass, Fulero, & Brimacombe, 1998), the same year that U.S. Attorney General Janet Reno organized a working group to draft guidelines for the National Institute of Justice. Those guidelines were published in October 1999 (Technical Working Group, 1999). In April 2001, New Jersey became the first state to adopt guidelines based in large part on the APLS and Justice Department Guidelines. Since then, many other state and local jurisdictions have adopted reforms based largely on the APLS and NIJ guidelines.

Eyewitness Identification Reform in California

California's efforts toward eyewitness identification reform began on August 27, 2004, through a resolution of the senate that created the California Commission on the Fair Administration of Justice, chaired by former Attorney General John van de Kamp. The Commission studied, deliberated, and made recommendations on a number of criminal justice issues. In addition to eyewitness identification (the focus of this article), the Commission also made recommendations related to forensic science, interrogations and confessions, the use of informant testimony, the administration of the death penalty, and eyewitness identification.

The Commission invited researchers, conducted a public hearing on March 15, 2006, and issued its initial eyewitness identification report in 2006 and its final report in 2008. The Commission recommended the following:

- Police should avoid using show-up identification procedures in favor of lineup identification procedures.
- Lineups should include a single suspect plus a minimum of five fillers who are known to be innocent.
- The fillers for those lineups should be selected based on their match to a description of the perpetrator.
- All identification procedures should include instructions to the witness stating that the perpetrator may or may

not be in the lineup, and that an identification or non-identification will not end the investigation.

- Lineups should be presented sequentially, one lineup member at a time, requiring a decision by the witness for each lineup member before presenting the next lineup member.
- Lineups should be presented by a blind administrator who does not know which person in the lineup is the suspect.
- Witnesses who make an identification should be asked to describe their level of certainty before receiving any feedback about their identification.
- All identifications should be documented through video recording.

Since the Commission issued its final report, five bills have been introduced in the California legislature, but none have been signed into law. Senate Bills 1544, 756, and 1591 directed law enforcement officials to, “study and consider adoption of new policies and procedures similar to those recommended by the National Institute of Justice and the California Commission on the Fair Administration of Justice.” Two recent bills, AB 604 and AB 807 introduced in 2012 and 2013, respectively, proposed a change in the Evidence Code regarding expert testimony on eyewitness identification, and two changes in the Penal Code. Section 686.3 of the Penal Code would encourage, but not require, law enforcement agencies to adopt a specific set of regulations. Section 1127i of the Penal Code would instruct jurors in criminal cases involving eyewitness identification evidence that, “If police did not follow the procedures recommended in Section 686.3, consider the eyewitness identification with caution and close scrutiny.”

The state's failure to implement eyewitness reform has been met with sharp criticism (American Civil Liberties Union, 2007; Possley, 2013; Scheck & Newirth, 2012; Terzano, 2001). Although some law enforcement jurisdictions have adopted eyewitness identification reforms (San Francisco and Santa Clara County), the Innocence Project pointedly notes that, “California has no statewide eyewitness identification reform policy.” Our purpose here is not to dig deeper into legislation, or the basis of the opposition. Rather, our purpose is to consider these reforms in light of data, theory, and policy analysis that have been developed in the years since the Commission's final report, as a first step in reconsidering steps toward the future.

The Importance of Accuracy

At the outset we must establish how identification and relevant legal procedures are to be evaluated. The primary guiding principle for evaluating these procedures is *accuracy*. This seems reasonable if not self-evident, and yet it is a source of considerable controversy and confusion in both research and policy. At issue is how one measures accuracy. In both research and policy, accuracy is often defined in terms of reducing the false identification rate for suspects who are innocent. If the goal was simply to minimize the false identification rate, the eyewitness identification problem could be fixed today with no research, no Commissions, and no Task Forces, by simply banning all eyewitness identification procedures and thus reducing the risk of false identification to *zero*. The problem, of course, is that such a ban would also reduce correct identifications to zero.

Clearly, any measure of accuracy must consider both correct identifications of suspects who are guilty as well as false identifications of suspects who are innocent. The complexity of the problem arises from a fundamental trade-off of errors. Identification procedures that reduce the false identification rate also reduce the correct identification rate, and procedures that increase the correct identification rate also increase the false identification rate (Clark, 2012). There is no free lunch in eyewitness identification reform, contrary to claims that have been repeatedly made by researchers and policy-makers.

Having acknowledged this fundamental trade-off of errors, one can consider how different procedures affect *overall* accuracy. For example, if a procedure results in a large reduction in false identifications, and only a small reduction in correct identifications, overall accuracy will increase. On the other hand, if a procedure results in a small reduction in false identifications and a large reduction in correct identifications, overall accuracy will decrease.

In assessing accuracy it is essential to separate quantity from quality. Quantity is about how many suspects are identified, whereas quality is about the proportion of those identified suspects who are truly guilty. If witnesses are very conservative in their decision-making they may identify very few suspects, in which case the false ID rate will be low, but the correct ID rate will also be low. On the other hand if witnesses are more liberal in their decision-making they may identify more suspects, thus increasing the correct ID rate but also increasing the false ID rate. To measure accuracy properly, one must consider how witnesses' responses change along this continuum of decision-

making, in a way that does not confuse quantity with quality. The best way to do this is through a technique called *Receiver Operating Characteristic* (ROC) analysis. The details of this analytic tool are beyond the scope of the present article, but are available in many sources, including a recent paper by Gronlund, Mickes, and Wixted (2013). With the right measure of accuracy we can now evaluate recommendations for eyewitness identification reform.

Lineup or Showup?

The one-person showup procedure has been widely criticized as inherently suggestive and unreliable, and consequently lineup identification procedures are almost universally preferred over showup procedures. One exception is when a suspect is located by police soon after the crime. For example, police responding to an armed robbery 911 call may see a person who fits the description of the perpetrator, near the location where the robbery occurred, just minutes after the 911 call. Standard procedure in these circumstances is for the police to transport the witness to that person and ask the simple question, "Is this the person who robbed you?" The advantage to the showup procedure is that it can be conducted quickly, easily, and on the spot. Lineups may be more difficult and slower to arrange. A photo lineup cannot be conducted unless the police have access to a photograph of the suspect, and a live lineup cannot be conducted unless there is probable cause for arrest, and a suitable lineup can be constructed with fillers from the available jail population.

According to this analysis, the key comparison would be for a showup conducted right away versus a lineup conducted later. Of course the comparison is more complicated than that because showups typically involve a live person, whereas lineups often involve head-and-shoulders photographs, rather than live bodies. This makes for an apples-to-oranges comparison, not simply between one person versus six persons, but rather between one person shown live versus six persons shown in head-and-shoulders photographs. The socio-legal literature comparing showup and lineup procedures is long on opinion, intuition, and implied or explicit policy recommendations, but falls short on critical empirical comparisons. Most experimental studies have equated the passage of time between the staged crime and the identification procedure, and these studies show an accuracy advantage for lineups over showups (see Clark, 2012 for a review). However, only a few studies have made the showup-

sooner versus lineup-later comparison, and none have made the “live ID now” versus “photo ID later” comparison.

Lineup Composition

In order to construct a live or photographic lineup, one must find suitable fillers. How many fillers should there be, and what makes a filler suitable? Researchers and the Commission recommended a minimum of five fillers selected to match a verbal description of the suspect. The five-filler minimum is a standard recommendation for lineups in the U.S., but there is actually little or no research to indicate why that should be the recommendation. Lineups with two rows of three photographs, sometimes called a photo six-pack, are simply a convention in the U.S. As for the issue of suitability, the general principle is that the fillers should be selected so that the suspect does not stand out. Selecting fillers that match the verbal description of the perpetrator is one way to do that. However, it is not the only way. The other way to ensure that the suspect does not stand out is to select fillers based on their similarity to the suspect. The difference between description-matched versus suspect-matched filler selection may seem like a hair-splitting difference (that won't be further split here), but the research shows that the distinction makes a difference. Researchers have claimed that overall accuracy is greater when fillers are selected based on their match to a verbal description compared to when they are selected based on their match to the suspect (Luus & Wells, 1991; Wells, Rydell & Seelau, 1993), and this claim is the basis of the description-matching preference in the NIJ guidelines (and presumably also the Commission recommendations). However, a full consideration of the relevant research literature suggests the opposite – that overall accuracy is greater with suspect-matched filler selection (Clark, Moreland, & Gronlund, 2014).

Witness Instructions

Researchers have recommended that witnesses be instructed that the perpetrator may or may not be present, that they are not required to make an identification, and that the investigation will continue, even if they do not make an identification. The first two parts of this instruction constitute what are typically referred to as *unbiased instructions*. Although such instructions are not mandated by California law, the instruction that the perpetrator may not be present has long been a standard procedure across law enforcement agencies in California.

Research on the effect of such instructions has evolved over 35 years. Based on early research findings (Malpass & Devine, 1981), eyewitness researchers claimed that unbiased instructions could decrease the false identification rate but have little or no effect on correct identification rates (Wells, 1984). However, as the research literature grew, this turned out not to be the case (Clark, 2005; 2012). The recommended instructions do appear to reduce the false identification rate, but they also reduce the correct identification rate so as to produce no net gain or loss in accuracy. In other words, the recommended instructions do not make witnesses more accurate, but rather produce a trade-off between correct identifications that are lost versus false identifications that are avoided. The instruction that the investigation will continue, irrespective of the witness's response, is not a common practice in California, and indeed there is no research as to the effect of such an instruction.

Sequential Lineup Presentation

Eyewitness researchers have recommended that lineups be presented sequentially rather than simultaneously. In the traditional simultaneous lineup, the witness is given the opportunity to see all members of the lineup before making any decision. In the sequential lineup, the witness is presented with one lineup member at a time and is required to make a decision for each lineup member with a yes (“that's the perpetrator”), no (“that's not the perpetrator”), or not sure response before the next lineup member is presented. The rationale for sequential lineup presentation is that it prevents witnesses from making comparisons among lineup members and then simply identifying the best match. The underlying assumption is that the comparison process, that is the comparison of lineup members to each other, undermines accuracy.

The preference for sequential presentation was particularly clear in California bills introduced in 2012 and 2013. However, this preference is not supported by data. Sequential lineup presentation has been shown to reduce the false identification rate, but has also been shown to reduce the correct identification rate. Again, the recommended procedure appears to trade one kind of error for another kind of error. The critical question is whether this is a good trade-off that results in an overall increase in accuracy. The early results appeared to show a robust accuracy advantage for sequential lineup presentation, but this pattern has not held up over time as dozens of additional studies have been conducted (Clark et al. , 2014), and the most recent

studies consistently show an accuracy *disadvantage* for sequential lineup presentation.

Blind Lineup Administration

At a minimum blind lineup administration requires that the person administering the lineup does not know which person in the lineup is the suspect. In other words, the administrator would not know if the suspect was in position 2, 4, or 6, for example. The purpose of blind administration is to minimize or eliminate any influence of the lineup administrator, either deliberate or inadvertent, that would steer the witness toward an identification of the suspect. An illustration of such influence is the seemingly innocuous comment, “I noticed that you paused on number three.” Such a comment might reorient the witness toward number three and increase the chances that number three would be identified. Moreover, the concern is that police might only make such a comment if number three was the suspect, but not if number three was a filler. The principle behind blind lineup administration is clear: One cannot steer the witness toward the suspect if one does not know who the suspect is, or where that suspect is in the lineup.

This recommendation is based on a large and well-established research literature showing how one person’s expectations and motivations can influence another person’s behavior, and also influence the interpretation of another person’s behavior. Rosenthal and Rubin described the consistency of these phenomena in an article published 37 years ago, entitled, “Interpersonal Expectancy Effects: The first 345 Studies”. Although this article convincingly established the fundamental finding – that one person’s expectations can influence another person’s behavior, it did not examine how that influence affected the accuracy of memory, and it did not consider studies on eyewitness memory. Thus, the question was left open as to how a lineup administrator’s expectations and interactions with witnesses would affect the accuracy of eyewitness identification decisions.

The current research literature on blind lineup administration is surprising in three ways: 1) there is in fact very little eyewitness research that compares accuracy in blind and non-blind administration procedures; 2) much of the research literature is unpublished, and 3) the results do not clearly show that blind lineup administration increases the accuracy of identification evidence. In fact, some research suggests that a lineup administrator’s attempts to steer witnesses toward the suspect can actually increase accuracy (Clark, Brower, Rosenthal, Hicks,

& Moreland, 2013).

These results raise a thorny problem as they appear to show that accuracy improves when police officers attempt to influence witnesses and steer them toward the suspect. If best practices are defined solely on the basis of the accuracy of the evidence, witness steering would be considered a best practice. The problem with police officers steering witnesses to identify the suspect may not be about the accuracy of the evidence (which may actually increase), but rather about how juries interpret the evidence in the context of other evidence. An example illustrates the problem. Imagine a case in which a person becomes a suspect in a homicide because police discover the victim’s property in the trunk of the suspect’s car. This only establishes that the suspect is in possession of stolen property, not that he is the killer. A witness to the homicide is asked to look at a lineup but hesitates to make any identification. The police officer, convinced of the suspect’s guilt, persists until the witness finally identifies the suspect as the killer.

Members of the jury might assume that these two pieces of evidence – the victim’s property and the witness’s identification – were independent, which would make their combination quite compelling evidence of guilt. In reality, however, the identification evidence is completely dependent on the other evidence. The witness made the identification *because* the police found the victim’s property in the suspect’s car. These findings on “witness steering” are surprising and provocative, and we need additional research to determine the extent to which lineup administrator “interventions” increase or decrease identification accuracy.

The Sequential/Blind Lineup

Blind lineup administration and sequential presentation are often linked together in reform proposals. For example, the Commission stated that, “When double-blind procedures are utilized, the use of sequential presentation of photos and lineups is preferred...” and that, “Sequential procedures should not be used where double-blind administration is not available.” Empirical evidence in support of this linkage could have only come from one study, by Phillips, McAuliff, Kovera, and Cutler (1999), which showed that blind lineup administration reduced the false identification rate for sequential lineups, but increased the false identification rate for simultaneous lineups. There is nonetheless an intuition that the one-at-a-time sequential pre-

sentation of lineup members makes the procedure more vulnerable to administrator influence than the simultaneous procedure.

Witness Expressions of Certainty

The Commission recommended that, "... a witness who has made an identification should describe his or her level of certainty." These statements of confidence are used in at least two ways in criminal proceedings. First, the U.S. Supreme Court in *Manson v. Braithwaite* (1977) instructs trial courts to consider the certainty of the witness in determining whether the identification will be admitted into evidence and presented to the jury. Second, pattern jury instructions in most states instruct jurors to consider the confidence of the witness in their evaluation of the reliability of the witness's identification.

However, *Manson* and similar Supreme Court rulings (*Neil v. Biggers*, 1972) have been widely criticized by many social scientists who have argued for decades that the relationship between confidence and accuracy is weak or non-existent. According to this view, a witness's expressions of confidence tell us little to nothing about whether that witness's identification is correct or incorrect. However, eyewitness identification experiments and field studies of actual criminal cases show a very strong relationship between confidence and accuracy, despite claims to the contrary. In fact, knowing the witness's level of confidence is more informative than other interventions, such as knowing whether the instructions were biased or unbiased, whether the lineup was presented simultaneously or sequentially, or whether the lineup was conducted by a blind or non-blind administrator (Wixted, Mickes, Clark, Gronlund, & Roediger, 2015). Importantly, the relationship between confidence and accuracy is strong for confidence statements that are obtained immediately, at the time the identification is made, and weaker for confidence statements obtained later—after witnesses are exposed to confirming feedback (Bradfield, Wells, & Olson, 2002).

In laboratory experiments the confirming feedback is quite explicit. For example, in some studies witnesses are told, "Good, you identified the suspect." In actual criminal cases the feedback may be less explicit. Although witnesses might not be told directly that they got it right, they may make reasonable deductions from the fact that the case has gone to trial and they have been asked to testify. The implication is that trial courts and jurors should give more weight to confidence statements given at the time the identification is made, before witnesses can

receive any feedback, and give less weight to confidence statements given later, after witnesses receive any feedback.

The U.S. Supreme Court got it exactly right when it stated that the trial court, in determining the admissibility of the evidence, should consider the, "certainty of the witness at the time of the [identification]." That important stipulation — *at the time of the identification* — was often omitted in pattern jury instructions. For example, The California pattern jury instructions, prior to their revision in 2006, instructed jurors to consider, "The extent to which the witness is either certain or uncertain of the identification," but did not specify whether this should refer to the statement made at the time of the identification, or the statement made at the trial. The revised pattern jury instructions ask the juror to consider, "How certain was the witness *when he or she made an identification?*" (Judicial Council of California, CAL-CRIM, 2015p. 85, emphasis added).

The recommendation to obtain a statement of confidence from the witness at the time of the identification is on solid scientific footing (see Wixted et al., 2015). The question remains about how such statements of confidence should be obtained. Consider the following from the *California Peace Officers Legal Sourcebook*: "[N]ever ask a witness to state his certainty on a scale of 1-10 or as a percentage. The witness will rarely say 100 percent no matter how sure he is, and a couple of percentage points might give a naïve juror a 'reasonable doubt' about the defendant's guilt. If you feel the witness is certain, ask him whether he is."

There are two points woven into this passage. The first is that police should be cautious in asking witnesses to express their certainty on a numerical scale to the extent that people are reluctant to express absolute certainty. The second point is more subtle. Between the lines, the *Sourcebook* seems to be instructing police to only ask the witness to make a certainty statement when they believe the witness is certain, but not ask the witness to make a certainty statement when they think the witness may be uncertain. To the extent that the *Sourcebook's* instruction is interpreted and followed in this way, it is an opportunity lost. The police should ask *all* witnesses for an expression of their certainty. Witnesses who are tentative, or who express low confidence, may be conveying an important message: *There is a good chance that my identification is wrong.*

Blind Lineup Administration and Witness Certainty

One of the arguments in favor of blind lineup administra-

tion is that it prevents subtle forms of communication between the police and witness that could inflate the witness's confidence. For example, the police officer might respond differently to a witness who identified number three from the lineup – in terms of his or her posture and tone of voice -- if number three is the suspect rather than a filler. In other words, the witness may be more confident about his or her identification based on how the lineup administrator responds. This would provide a strong argument in favor of blind lineup administration as it would prevent the administrator's expectations and knowledge from influencing the witness's expressions of confidence. However, there are also research findings which suggest that non-blind interventions selectively reduce the confidence of false identifications (Clark et al. 2015). This is useful, as low-confidence identifications are marked as more likely to be incorrect.

Documentation

Many reform proposals, including those of the California Commission and the National Research Council, have recommended that all identification procedures should be video recorded. Those recordings would serve two purposes. First, they would eliminate disagreements about what actually happened, for example, whether the witness actually made an identification, or whether the police officer or detective made any suggestive comments or misread instructions. Second, video recording may provide additional information about the identification that would be useful to those who would evaluate the reliability of the evidence. On this point there remains a question: Are observers better at distinguishing between accurate and inaccurate identifications if they are provided with a video record of the procedure, in addition to observing the witness's testimony? Reardon and Fisher (2011) addressed that question with identifications obtained from a staged-crime experiment where the accuracy of the identifications was known. The participants in their study were better able to distinguish between accurate and inaccurate identifications when they were presented with the video recording in addition to hearing the testimony. However, although these results are promising, more research is needed to determine the generality of the finding.

Reform Redux

Where does all of this leave us in terms of what California has done and should do? The change in the jury instructions

that specifically focus jurors on the confidence of the witness at the time of the identification, rather than at the time of trial, is based on solid science (Wixted et al., 2015). California's resistance to sequential lineups, viewed now through the 20/20 hindsight provided by new research and new analyses, also has a strong scientific foundation. This new research raises a question as to whether those jurisdictions that have implemented sequential lineup presentation should reconsider their policy. Blind lineup administration, while based on a solid scientific principle, may not actually increase the accuracy of eyewitness identification evidence, although there may be other good reasons to consider it.

For many other proposed reforms, the research is inadequate or unclear.

Should showups be avoided? The research is not clear. To address this question, the research needs to compare live single-person identification procedures conducted within minutes to photographic lineup identification procedures conducted one to two days later. Should all identification procedures be video-recorded? There is some evidence to suggest that video recordings can provide useful information that will allow observers to better evaluate the accuracy of the identification. However, there is very little research, and more research should be done.

In retrospect, it is probably a good thing that the five bills introduced by the California legislature were not signed into law. (In the interest of full disclosure, the author of this article was a supporter of the early legislation and wrote to Governor Schwarzenegger in 2007 urging him to sign SB 756 into law.) The research of the last eight years have profoundly altered the scientific basis for the proposed reforms. If the failure of those five bills is an indication of how difficult it is to reform police procedures, one must wonder how difficult it would be to "un-reform" police procedures that turned out to be not as good as advertised.

Best Practices and Best Policy

Police should employ best practices for interviewing eyewitnesses and obtaining eyewitness identification evidence. But this intuitive truism is complicated in at least two ways: First, reasonable people can disagree about what are considered to be best practices. Second, a procedure that was considered to be a best practice five years ago may not be considered to be a best practice today. As a scientific research literature grows, new research methodologies will be developed, new insights will be

generated, and settled science may become unsettled. Four recommendations to strengthen the link between social science and social policy, and allow social policy to evolve with social science are:

(1) Policy-makers may appropriately mandate the use of best practices, but should not mandate the use of *specific* procedures as a matter of law.

(2) Any legislation, or statement of best practices, should include sunset provisions that require policy-makers to evaluate the impact of those best practices, and to re-evaluate the research literature upon which those best practices were established.

(3) The research foundation for policy reform must be strengthened. In many cases, policy changes have been based on the results of one or two studies. In some cases those one or two studies were unrepresentative of the complete research literature. In other words, policy changes made reference to one or two studies that supported the reform and failed to consider studies that did not support the reform.

(4) The relationship between science and policy must be fully articulated, clear, and transparent, and the roles and responsibilities of researchers and policy-makers need to be clarified. Researchers should strive to *inform* policy, rather than *influence* policy, by framing policy recommendations as if-then statements of the form, “If Policy X is adopted, then, based on the research, Y consequences should be observed.” Policy-makers who are asked to consider reforms based on scientific research should not rely on research summaries or opinions of others, but should respond with four words: *Show me the data*. Policy-makers need to wade much deeper into the data upon which such recommendations are made.

Conclusion

The research on eyewitness identification has been re-considered, settled science has become unsettled, and some researchers have asked, “How did the research get it wrong?” (Gronlund et al. 2015). This sobering re-evaluation of the research literature should not bring the reform movement to a

halt. The problem that the reform movement was directed toward has certainly not ceased. Witnesses, and the criminal justice system more broadly, continue to make errors. This re-evaluation of the research literature should not be viewed as a failure of the social science, but rather as a necessary step toward the important goal of increasing the accuracy of the criminal justice system.

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