



Benjamin N. Cardozo School of Law, Yeshiva University

## **RESPONSE TO THE ILLINOIS PILOT PROGRAM REPORT**

### **ILLINOIS “EXPERIMENT” WAS NOT SCIENTIFICALLY CONDUCTED; THEREFORE IT IS NOT A RELIABLE PREDICTOR OF THE DOUBLE-BLIND SEQUENTIAL PROCEDURE’S VALIDITY OR EFFECTIVENESS**

- Gary Wells, one of the leading authorities on eyewitness identification, and other noted social scientists note that the experiment was not conducted according to fundamental scientific principles, and therefore fails to provide any scientific validity or reliability. Specifically, the “experiment” compared the sequential procedure using double-blind administration to the simultaneous procedure *absent* double-blind administration. This lack of controls in the study’s design is a fatal scientific flaw, and “precludes any meaningful conclusions about the results.”<sup>1</sup>

### **ACCEPTANCE OF A REFORM’S VALUE IS CRITICAL TO EFFECTIVE IMPLEMENTATION; ILLINOIS ADMINISTRATORS WERE HOSTILE**

- Law enforcement, prosecutors, and researchers agree that successful implementation requires police acceptance of new procedures. “If you are going to take officers outside their comfort zone, you have to be able to sell them on the reasons you are doing it,” said Sheri Mecklenburg, general counsel to the superintendent of the Chicago Police Department and director of the experiment.”<sup>2</sup>
- Yet Chicago law enforcement and prosecutors lobbied hard against the pilot program from the outset<sup>3</sup> and such “acceptance” never had an opportunity to come about in Illinois. According to the Illinois Report, “Joliet in particular felt a lack of comfort with the process, leading Joliet to change its form about two months into the program...”<sup>4</sup>
- Researchers and law enforcement leaders who have adopted the reform are unanimous in their belief that an understanding and appreciation of the reform on the part of law enforcement is vital to its successful implementation. According to Lt. Ken Patenaude, a 25-year veteran of the Northampton (Massachusetts) Police Department, who implemented a sequential double-blind procedure in his jurisdiction, “[The investigators] have received formal training and the support of a policy that guides them through the process that they believe in.”<sup>5</sup>

### **“CONFOUND” IN ILLINOIS EXPERIMENT CAUSE INCONGRUITY WITH EXISTING SCIENTIFIC FINDINGS AND OTHER JURISDICTIONS’ EXPERIENCES**

- Nearly the entire body of existing research consistently supports the effectiveness of the double-blind sequential procedure in decreasing false identifications.<sup>6</sup>
- A recent analysis of a pilot program in Hennepin County, Minnesota, which includes Minneapolis and several dozen suburban communities, that also tested the effectiveness of a double-blind sequential lineup concluded, “the Hennepin County pilot project substantially decreased the rate of false identification, yet maintained an effective rate of suspect identification.”<sup>7</sup>

## **ILLINOIS PILOT SEEKS TO CHALLENGE “SEQUENTIAL” PROCEDURE, YET MAKES NO ATTEMPT TO REFUTE EFFECTIVENESS OF OTHER ACCEPTED REFORMS**

The standard eyewitness identification reform package, for which sequential is optional, is already being implemented in several jurisdictions. The state of New Jersey, Boston, MA; Northampton, MA; Madison, WI; Winston Salem, NC; Hennepin County (Minneapolis-St. Paul), MN; Santa Clara County, CA have implemented “sequential double-blind as standard procedure; North Carolina and Wisconsin have promulgated “sequential double-blind” voluntary guidelines and/or incorporated them into trainings; California’s Commission on the Fair Administration of Justice, following the release of the Illinois Report, issued its own report calling for a statewide adoption of the “sequential double-blind” reform.

The larger package of reforms to improve the accuracy of eyewitness IDs includes:

- Blind administration<sup>8</sup>
- Instructions to the witness, including the directive that the perpetrator may not be present<sup>9</sup>
- Eliminating confirming feedback once an identification is made<sup>10</sup>
- Obtaining a statement from the witness, indicating his level of confidence in the identification
- Choosing fillers that match the description provided by the filler and do not unduly stand out

<sup>1</sup> Gary Wells’ website: [http://www.psychology.iastate.edu/FACULTY/gwells/Illinois\\_Pilot\\_Program\\_on\\_Sequential\\_Double-Blind\\_Identification\\_Procedures\\_reactions.pdf](http://www.psychology.iastate.edu/FACULTY/gwells/Illinois_Pilot_Program_on_Sequential_Double-Blind_Identification_Procedures_reactions.pdf)

<sup>2</sup> New York Times, April 19, 2006.

<sup>3</sup> Prior to the passage of the legislation that mandated the creation of the pilot project, the Chicago Police and the Fraternal Order of Police voiced skepticism and an aversion to testing the procedure in Chicago. (Frank Main, “One-by-one Police Lineup Considered,” Sun-Times, 5/6/03)

<sup>4</sup> Report to the Legislature of the State of Illinois: The Illinois Pilot Program on Sequential Double-Blind Identification Procedures, p. 60.

<sup>5</sup> Patenaude, K. “Improving Eyewitness Identification,” *Law Enforcement Technology*, October, 2003.

<sup>6</sup> Notably, a meta-analysis, which collapsed the results of twenty-three papers that comprised 4,145 participants, showed that the rejection of the innocent occurred at a significantly higher rate in a sequential lineup compared to a simultaneous one. (Stebly, N. Jennifer Dysart, Solomon Fulero, R. C. L. Lindsay. (2001). “Eyewitness Accuracy Rates in Sequential and Simultaneous Lineup Presentations: A Meta-Analytic Comparison,” *Law and Human Behavior*, 25, 459-473).

Among other prominent studies that support the use of the double-blind sequential procedure include:

Lindsay, R. C. L., Lea, J. A., Nosworthy, G. J., Fulford, J. A., Hector, J., LeVan, V., & Seabrook, C. (1991).

Biased lineups: Sequential presentation reduces the problem. *Journal of Applied Psychology*, 76(6), 796-802.

G. Wells, G.L., Small, M. & Penrod, S. et al., Eyewitness Identification Procedures: Recommendations for Lineups and Photospreads, *22 Law & Hum. Behav.* 603, 619-20 (1998).

<sup>7</sup> Klobuchar, A. & Hilary Caliguiri, “Protecting the Innocent/Convicting the Guilty: Hennepin County’s Pilot Project in Blind Sequential Eyewitness Identification,” *William Mitchell Law Review*, Vol. 32:1.

<sup>8</sup> A wealth of research lends support to the supremacy of a procedure that incorporates blind administration, including: National Institute of Justice, *Eyewitness Evidence: A Guide for Law Enforcement* (1999).

Wells & E. Seelau, “Eyewitness Identification: Psychological Research and Legal Policy on Lineups,” 1(4) *Psychology, Public Policy, & Law* 765, 768-69 (1995).

<sup>9</sup> S. Malpass & P.G. Devine, “Eyewitness Identification: Lineup Instructions and the Absence of the Offender,” *Journal of Applied Psychology*, Vol. 66, 482-89 (1981);

National Institute of Justice, *Eyewitness Evidence: A Trainer’s Manual For Law Enforcement* (October 2003).

<sup>10</sup> Hafstad, G. S., Memon, A., & Logie, R. (2004). “Post-identification Feedback, Confidence and Recollections of Witnessing Conditions in Child Witnesses,” *Applied Cognitive Psychology*, 18, 901-912.

Neuschatz, J. S., Preston, E. L., Burkett, A. D., Togli, M. R., Lampinen, J. M., Neuschatz, J. S., Fairless, A. H., Lawson, D. S., Powers, R. A., & Goodsell, C. A. (2005). “The Effects of Post-identification Feedback and Age on Retrospective Eyewitness Memory.” *Applied Cognitive Psychology*, 19, 435-453.