

AMERICAN BAR ASSOCIATION STATEMENT OF BEST PRACTICES FOR PROMOTING THE ACCURACY OF EYEWITNESS IDENTIFICATION PROCEDURES DATED AUGUST, 2004

A. General Guidelines for Administering Lineups and Photospreads

1. Whenever practicable, the person who conducts a lineup or photospread and all others present (except for defense counsel, when his or her presence is constitutionally required) should be unaware of which of the participants is the suspect;

2. Eyewitnesses should be instructed that the perpetrator may or may not be in the lineup; that they should not assume that the person administering the lineup knows who is the suspect; and that they need not identify anyone, but, if they do so, they will be expected to state in their own words how certain they are of any identification they make or the lack thereof;

B. Foil Selection, Number, and Presentation Methods

1. Lineups and photospreads should use a sufficient number of foils to reasonably reduce the risk of an eyewitness selecting a suspect by guessing rather than by recognition;

2. Foils should be chosen for their similarity to the witness's description of the perpetrator, without the suspect's standing out in any way from the foils and without other factors drawing undue attention to the suspect;

3. The advisability of either a sequential lineup or photospread (showing one person or photo to a witness at a time, with the witness being asked to identify or not identify each person or photo immediately after it is presented) or a simultaneous lineup or photospread (showing a witness all lineup members or photographs at the same time) should be carefully considered;

4. Police departments and prosecutors should be urged to participate in properly-designed comparative field experiments in which one group of police districts in a city or county uses simultaneous lineup and photospread methods while another group of police districts uses sequential methods;

C. Recording Procedures

1. Whenever practicable, the police should videotape or digitally video record lineup procedures, including the witness's confidence statements – which confidence statements the police must elicit immediately after the lineup -- and further including any statements made to the witness by the police;

2. Absent videotaping or digital video recording, a photograph should be taken of the lineup and a detailed record made describing with specificity how the entire procedure (from start to finish) was administered, also noting the appearance of the foils and of the suspect and the identities of all persons present.

D. Immediate Post-Lineup or Photospread Procedures

1. If videotaping or digital video recording of lineup procedures is impracticable, and for all photographic identifications, immediately after completing the identification procedure, the eyewitness's confidence level should be determined in a non-suggestive manner and accurately memorialized in some fashion, though the police should avoid at any time giving the witness feedback on whether he or she selected the "right man" -- the person believed by law enforcement to be the culprit.