

TESTIMONY OF DARIEN POLICE CHIEF DUANE LOVELLO  
REGARDING THE DARIEN POLICE DEPARTMENT'S PHOTO LINEUP  
PROTOCOLS

To my fellow Committee members and guests, good morning. I am Darien Police Chief Duane Lovello. I would like to thank our Committee Chair, Justice Borden, for the opportunity to speak today regarding the current photo identification protocols used by the Darien Police Department and other information obtained in conjunction with the work of this Committee.

To start off, I believe it would be useful to provide some background on the police activities of the Darien Police Department.

The Town of Darien is located on I-95 between the cities of Stamford and Norwalk. With approximately 20,000 residents, Darien, by all measures, enjoys a very low crime rate. Violent crime is a rare occurrence. The Darien Police Department, comprised of 51 sworn police officers, handles approximately 20,000 incidents per year and makes approximately 350 custodial arrests. The Department uses photo lineups approximately twelve times per year, more or less. It is important to note that any police agency should be reluctant to bring a case in which the sole evidence is an eyewitness identification. In my thirty years with the Darien Police Department, I cannot recall of any such case, although Mr. Kane might be in a better position to comment on that.

Over the past decade, there have been various articles, publications, and studies done on the efficacy of the double-blind sequential lineup versus the simultaneous lineup. While the available evidence seemed to suggest the sequential possessed advantages over the simultaneous, it did not gain enough traction to cause a change in Connecticut.

Up until two years ago, we used a simultaneous photo lineup consisting of eight photos. We have not used six photos, or the commonly known “six pack,” for fifteen to twenty years.

Approximately two years ago, detectives approached the Detective Bureau Commander and suggested that serious consideration be given to moving away from simultaneous lineups in favor of the double-blind sequential protocol. These detectives, after having read various articles on the procedure, believed the move would have less potential for misidentifications and would provide a more accurate platform to obtain suspect identifications from witnesses and victims. After discussion, the simultaneous lineup was abandoned in favor of the double-blind sequential.

The transition to the new method was relatively easy with a minimal amount of training needed to use the new method. Darien uses printed photos of each subject; a computer program is not used to administer the lineup. All lineups are retained as evidence.

With the adoption of the new protocol, a form was developed to provide instructions to the officer administering the lineup. These instructions begin with a statement that “a fair and objective identification procedure promotes an accurate and reliable identification or non-identification by a witness.” The instructions to the officers consist of the following six directives:

1. Read the witness instructions verbatim, and have the witness initial each line.
2. Confirm that the witness understands the instructions.
3. Avoid words, gestures, or expressions which could influence the witness’ selection. If practical, take a position where the witness cannot see you.
4. If the witness makes an identification, refrain from making any comment on the witness’ selection.

5. Write any identification results. Note the witness statement made at the time of the identification in the “comments” section.
6. Document the date and time of the identification procedure, the names of anyone present, and the subjects and sources of all photos used. Preserve the array.

At the same time, a new witness identification form was developed. This form, while documenting general identifying information on the incident being investigated, also contains the following six witness instructions, recited by the officer and acknowledged by the witness with a request that the witness initial each:

1. I will ask you to view a set of photographs.
2. It is as important to clear innocent people as to identify the guilty.
3. Persons in the photos may not look exactly as they did on the date of the incident because features like facial or head hair can change.
4. The person you saw may or may not be in these photographs.
5. The police will continue to investigate this incident, whether you identify someone or not.
6. The photos are in sequential order and all photos will be shown.

The officer administering the lineup, who has no knowledge of who the potential suspect is or that person’s position in the lineup, then administers the lineup in sequential order. Once the process is completed, the witness initials one of the three following statements:

1. I understand the instructions, have viewed the photos, and have identified number (blank) or,
2. I understand the instructions, have viewed the photos, and have not identified anyone, or,
3. I understand the instructions, have viewed the photos, and have identified photo number (blank), although I am not sure of this identification.

The witness is then asked to provide a written comment regarding any identification, including a “not sure” identification.

Both the witness and the officer then sign the form, which as stated earlier is retained as evidence.

I should point out that the “not sure” category was a very recent modification to the policy based on information contained in the American Judicature Society report, of which our previous guest, Dr. Gary Wells, was an author.

We also noted that there has been some recent Connecticut Supreme Court activity where eyewitness identification procedures have been scrutinized, with the “double-blind sequential” lineups being mentioned as a sidebar or as a point raised. Two of these cases, *State v. Outing* and *State v. Marquez*, were discussed during the annual legal update training given to all Darien police officers last year. These cases reinforced Darien’s decision to move away from simultaneous to double-blind sequential. Some very important things to take note of, however, are that Darien’s protocols are not the result of an external mandate, but were done of our own volition. Second, given the relatively short period and small number of uses, Darien’s experience can provide some useful data, but certainly should not be construed as an accurate gauge of the practicality of expanding its use statewide.

So how does a photo lineup get constructed? While the simple answer is that six or eight photographs of individuals similar in appearance are retrieved from police files, in reality police agencies employ various methods in putting together a lineup. In Darien, we have used digital photography for booking photos, or “mug shots,” for approximately seven years. All of the booking photos are taken in the same location with the identical background. The digital photos, once taken, are electronically attached to the case folder along with all physical descriptors of the subject. When the need for a photo array comes about, the physical description as

furnished by the witness is placed into our software program and the program retrieves photos of all subjects fitting that description. From there, investigators retrieve the photos needed to complete the lineup. If the software is unable to identify a sufficient number of photos for an array, the parameters of the search can be adjusted. For instance, if the witness described the subject as being approximately twenty-five years of age, the software will generally search our database for all photos plus or minus three years from twenty-five years of age. Should the software be unable to identify a sufficient number of subjects based on the default parameters, the parameters can be adjusted, for example, to search plus or minus four years from age twenty-five to obtain a sufficient number of photos.

To date, the Darien Police Department has not identified a significant impediment to using the double-blind sequential lineup.

There can be certain impediments to constructing a fair photo array, and these generally revolve around a suspect or a suspect description that makes retrieving photos of similar appearing subjects difficult or impossible. With the proliferation of body art, such as tattooing and piercings, it is not uncommon to see a subject with distinctive tattoos or extensive piercings on their face, multi-color hair, etc. These can present obstacles to using a photo lineup.

The Committee will recall that Justice Borden, at our first meeting, asked that Connecticut police departments be surveyed to determine whether agencies are currently using double-blind, or sequential, or a combination of the two. The survey would also provide a mechanism to identify any potential issues with the implementation of the double-blind requirement on January 1<sup>st</sup> and would also provide a platform to identify similar concerns regarding simultaneous versus sequential.

Given the tight frame the Committee is operating under, an initial survey was sent to all Connecticut police chiefs shortly after our first meeting.

Simultaneously, Dr. Ron Schack, assisted by myself and Deputy Chief Thernauer of East Hartford, began assembling a survey that could be distributed and retrieved electronically via Survey Monkey. This survey is now ready for distribution and will go out by the end of the week. We will make every effort to push for completion of these surveys to ensure a sufficient sample set can be obtained for analysis by Dr. Schack.

The initial survey results were telling in that the issues distilled quickly into some common themes, regardless of Department size. Surprisingly, the concerns raised did not center on the use of sequential over simultaneous lineups, that being one of the central charges of this Committee, but rather the practical application, via Section 1 of the statutory mandate, of “double-blind” and the phrase “when practicable.”

Insofar as the use of sequential lineups were concerned, there was no discernible information received via the survey that suggested police agencies had fact based evidence against the use of sequential. In fact, several chiefs commented that it appeared to be the preferred route based on the latest studies. Areas of concern regarding implementation of sequential generally centered on software related issues. Several departments, including one very large department, commented that their current software packages build and retain simultaneous arrays only, and that there would be an expense in adapting the software to sequential. While this can be described as a corollary issue, it is an issue nonetheless.

The more pointed commentary centered on the Section 1 mandate of “double-blind” and the term “when practicable.” I think there are unanswered questions here, as there was a nearly unanimous opinion that double-blind may not be practicable in a smaller agency having only a handful of officers, where it is generally a given that the entire staff would have knowledge of a particular suspect on nearly everything that police department investigated. Similarly, a large agency where the suspect’s photo may have been widely distributed throughout not only that agency, but surrounding agencies as well, prior to a witness being identified to

view an array, could be an issue. Other concerns raised included affording an offender in a rapidly unfolding investigation additional time for flight as the mechanics of obtaining someone to administer a double-blind lineup are arranged.

An important point to acknowledge here is that the Act prescribes the use of a double-blind lineup, "when practicable." The option of a "blind" lineup, accomplished by using something as simple as folders or envelopes, does not appear to be an option in the Public Act, unless it could be interpreted as allowable should a double-blind not be "practicable" in a particular circumstance. I do think this area is something the Committee ought to contemplate, as it appears that the concern lies not in the principal charge of the Committee, that being the use of sequential over simultaneous, but rather the double-blind mandate. I would hope that future speakers can address and put to rest these areas of concern based on real life experience. As I stated earlier, the Darien Police Department experience, while positive, is limited and should not be used as a final measure.

Finally, I did have occasion last week to attend a panel discussion in Chicago entitled "Eyewitness Identification Reform." The panelists included Capt. John Stamatopoulos and Atty. Lisa Judge of the Tucson Police Dept., Atty. Barry Scheck, Co-Director of the Innocence Project, and Dr. Nancy Steblay, who along with our previous guest, Dr. Gary Wells, and Dr. Jen Dysart, authored the AJS report discussed at length with us by Dr. Wells.

This discussion did much to further educate me about the work this Committee is undertaking; many of the questions asked were similar to those posed by various members of the Committee and law enforcement. The panel discussion was well attended by representatives of law enforcement, the defense bar, and victim's advocates. As luck would have it, I found myself seated next to Deputy Chief Bill Brooks of the Wellesley, MA Police Department. Deputy Chief Brooks will be joining us on the 16<sup>th</sup>

to discuss not only his department's experience with double-blind sequential lineups, but his deep knowledge of the subject as an instructor on the topic. I enjoyed some good discussion with Deputy Chief Brooks after the panel discussion, and I think you will find his presentation most helpful. I am also optimistic that Deputy Chief Brooks can address some of the concerns brought forward via the survey.

In closing, I am happy to report that my law enforcement colleagues share this Committee's goal of putting into place procedures and safeguards to ensure not only the arrest of the guilty, but the protection of the innocent. I think law enforcement has a responsibility to ensure that best practices are developed in every aspect of police operations. Certainly that responsibility extends to witness identifications and I would prefer to see law enforcement leading the way in this regard.

With that, I thank the Committee for their time and I am happy to answer any questions the Committee may have.