

U.S. Department of Justice  
Office of Justice Programs  
National Institute of Justice



# Eyewitness Evidence

## A Guide for Law Enforcement



research report

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## Message From the Attorney General

**E**yewitnesses frequently play a vital role in uncovering the truth about a crime. The evidence they provide can be critical in identifying, charging, and ultimately convicting suspected criminals. That is why it is absolutely essential that eyewitness evidence be accurate and reliable. One way of ensuring we, as investigators, obtain the most accurate and reliable evidence from eyewitnesses is to follow sound protocols in our investigations.

Recent cases in which DNA evidence has been used to exonerate individuals convicted primarily on the basis of eyewitness testimony have shown us that eyewitness evidence is not infallible. Even the most honest and objective people can make mistakes in recalling and interpreting a witnessed event; it is the nature of human memory. This issue has been at the heart of a growing body of research in the field of eyewitness identification over the past decade. The National Institute of Justice convened a technical working group of law enforcement and legal practitioners, together with these researchers, to explore the development of improved procedures for the collection and preservation of eyewitness evidence within the criminal justice system.

This *Guide* was produced with the dedicated and enthusiastic participation of the seasoned professionals who served on the Technical Working Group for Eyewitness Evidence. These 34 individuals brought together knowledge and practical experience from jurisdictions large and small across the United States and Canada. I applaud their effort to work together over the course of a year in developing this consensus of recommended practices for law enforcement.

In developing its eyewitness evidence procedures, every jurisdiction should give careful consideration to the recommendations in this *Guide* and to its own unique local conditions and logistical circumstances. Although factors that vary among investigations, including the nature and quality of other evidence and whether a witness is also a victim of the

crime, may call for different approaches or even preclude the use of certain procedures described in the *Guide*, consideration of the *Guide*'s recommendations may be invaluable to a jurisdiction shaping its own protocols. As such, *Eyewitness Evidence: A Guide for Law Enforcement* is an important tool for refining investigative practices dealing with this evidence as we continue our search for truth.

Janet Reno

## Acknowledgments

The National Institute of Justice (NIJ) acknowledges with great thanks the members of the Technical Working Group for Eyewitness Evidence (TWGEYEE) for their extensive efforts on this project and their dedication to improving the use of eyewitness evidence in the criminal justice system. All of the 34 members of this network of experts gave their time and expertise to draft and review the *Guide*, providing feedback and perspectives from a variety of disciplines and from all areas of the United States as well as Canada. The true strength of this *Guide* is derived from their commitment to develop procedures that could be implemented across the Nation, from small, rural townships to large, metropolitan areas. In addition, thanks are extended to the agencies and organizations represented by the Technical Working Group members for their flexibility and support, which enabled the participants to see this project through to completion.

NIJ is grateful to all the individuals from various national organizations across the Nation who responded to the request for nominations of experts in the field of eyewitness evidence to serve on TWGEYEE. It was from their recommendations that the members were selected. In particular, thanks are extended to James D. Polley IV of the National District Attorneys Association, Daniel Rosenblatt of the International Association of Chiefs of Police, Stuart Siatler of the National Association of Criminal Defense Lawyers, Clinton Lyons of the National Legal Aid & Defender Association, and Alaine N. "Bobby" Moser, Jr., of the National Sheriffs' Association.

NIJ would also like to thank the many individuals and organizations who reviewed the draft of the *Guide* and provided valuable comments. Although these comments were given careful consideration by the Technical Working Group in developing the final document, the review by these organizations and individuals is not intended to imply their endorsement of the *Guide*.

Aspen Systems Corporation, particularly Gayle Garmise and Erica Pope, provided tireless work on editing and re-editing the various drafts of the *Guide*. CSR, Incorporated, provided support in arranging the group's many meetings.

Staff from NIJ and the Office of Justice Programs provided valuable input, particularly Janice Munsterman, Karl Bickel, Luke Galant, and Anjali Swirenton. Special thanks are extended to Lisa Forman and Kathleen Higgins for their contributions to the TWG program and to Lisa Kaas for her patience, dedication, endurance, and editing skills that made the work of TWGEYEE easier.

Finally, NIJ would like to acknowledge Attorney General Janet Reno, whose support and commitment to the improvement of the criminal justice system made this work possible.

## Introduction

The legal system always has relied on the testimony of eyewitnesses, nowhere more than in criminal cases. Although the evidence eyewitnesses provide can be tremendously helpful in developing leads, identifying criminals, and exonerating the innocent, this evidence is not infallible. Even honest and well-meaning witnesses can make errors, such as identifying the wrong person or failing to identify the perpetrator of a crime.

To their credit, the legal system and law enforcement agencies have not overlooked this problem. Numerous courts and rulemaking bodies have, at various times, designed and instituted special procedures to guard against eyewitness mistakes. Most State and local law enforcement agencies have established their own policies, practices, and training protocols with regard to the collection and handling of eyewitness evidence, many of which are quite good.

In the past, these procedures have not integrated the growing body of psychological knowledge regarding eyewitness evidence with the practical demands of day-to-day law enforcement. In an effort to bring together the perspectives of law enforcement, lawyers, and researchers, the National Institute of Justice (NIJ) convened the Technical Working Group for Eyewitness Evidence (TWGEYEE). The purpose of the group was to recommend uniform practices for the collection and preservation of eyewitness evidence.

This *Guide* differs from earlier efforts in several fundamental ways:

**This *Guide* is supported by social science research.** During the past 20 years, research psychologists have produced a substantial body of findings regarding eyewitness evidence. These findings offer the legal system a valuable body of empirical knowledge in the area of eyewitness evidence. This *Guide* makes use of psychological findings, either by including them in the procedures themselves or by using them to point

the way to the design and development of further improvements in procedures and practices for possible inclusion in future amendments or revisions to this document.

**This *Guide* combines research and practical perspectives.** The growth of social science research into the eyewitness process coincided with parallel efforts of law enforcement agencies to improve their own procedures. This *Guide* benefits from the inclusion of the diverse perspectives of TWGEYEE members; the group included not only researchers but also prosecutors, defense lawyers, and working police investigators from departments of all sizes and from all regions. This *Guide* represents a combination of the best current, workable police practices and psychological research.

**This *Guide* does not flow from the fear of misconduct.** This *Guide* assumes good faith by law enforcement. It identifies procedures and practices that will produce more reliable and accurate eyewitness evidence in a greater number of cases while reducing or eliminating practices that can undermine eyewitness reliability and accuracy.

**This *Guide* promotes accuracy in eyewitness evidence.** This *Guide* describes practices and procedures that, if consistently applied, will tend to increase the accuracy and reliability of eyewitness evidence, even though they cannot guarantee the accuracy (or inaccuracy) of a particular witness' testimony in a particular case. Adherence to these procedures can decrease the number of wrongful identifications and should help to ensure that reliable eyewitness evidence is given the weight it deserves in legal proceedings.

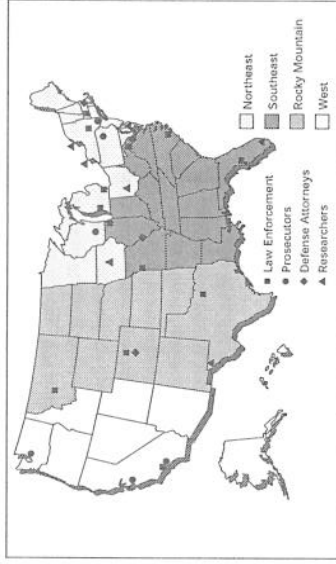
**This *Guide* is not a legal mandate; it promotes sound professional practices.** The *Guide* is not intended to state legal criteria for the admissibility of evidence. Rather, it sets out rigorous criteria for handling eyewitness evidence that are as demanding as those governing the handling of physical trace evidence. This *Guide* encourages the highest levels of professionalism.

Finally, it should be noted that, while this *Guide* outlines basic procedures that can be used to obtain the most reliable and accurate informa-

national criminal justice community based on regional distribution and individual expertise and availability.

Once members are identified, meetings are conducted by designated planning panel members. NIJ maintains a purely facilitative function.

The Planning Panel for Eyewitness Evidence met for the first time in May 1998 in Washington, D.C. After two planning meetings (the second in Oak Brook, Illinois), the Technical Working Group for Eyewitness Evidence was formed and convened for the first time in October 1998 in Chicago. The 34 TWGEYEE members (including the 9 Planning Panel members) represent the law enforcement, prosecution, defense, and research communities from across the United States and Canada.



The regional distribution of the Technical Working Group members is:

Region	Number of Participants	Percentage of Total
Northeast	14	41
Southeast	9	26
Rocky Mountain	5	15
West	4	12
Canada	2	6

The disciplinary distribution of the Technical Working Group members is:

Discipline	Number of Participants (Full TWG/ Planning Panel)	Percentage of Total (Full TWG/ Planning Panel)
Law Enforcement	17/3	50/33.3
Prosecutors	6/2	18/22.2
Defense Lawyers	4/1	12/11.1
Researchers	7/3	20/33.3

## Eyewitness Evidence: A Guide for Law Enforcement

Scientific research indicates that identification procedures such as lineups and photo arrays produce more reliable evidence when the individual lineup members or photographs are shown to the witness sequentially—one at a time—rather than simultaneously. Although some police agencies currently use sequential methods of presentation, there is not a consensus on any particular method or methods of sequential presentation that can be recommended as a *preferred* procedure; although sequential procedures are included in the *Guide*, it does not indicate a preference for sequential procedures.

Similarly, investigators' unintentional cues (e.g., body language, tone of voice) may negatively impact the reliability of eyewitness evidence. Psychology researchers have noted that such influences could be avoided if "blind" identification procedures were employed (i.e., procedures conducted by investigators who do not know the identity of the actual suspect). However, blind procedures, which are used in science to prevent inadvertent contamination of research results, may be impractical for some jurisdictions to implement. Blind procedures are not included in the *Guide* but are identified as a direction for future exploration and field testing. In the interim, an enhanced awareness on the part of investigators of the subtle impact they may have on witnesses will result in more professional identification procedures.

Technological advances such as computer-based imaging systems and the Internet will enable law enforcement to share images among departments and can facilitate the use of improved procedures. This *Guide* is not meant to inhibit the development and field testing of new technologies and procedures. On the contrary, it anticipates those developments and can provide a framework for innovation.

### Section I

Initial Report of the Crime/First Responder (Preliminary Investigator)

### Section II

Mug Books and Composites

### Section III

Procedures for Interviewing the Witness by the Followup Investigator

### Section IV

Field Identification Procedure (Showup)

### Section V

Procedures for Eyewitness Identification of Suspects

#### A. Answering the 9-1-1 (Emergency Call (Call-Taker/Dispatcher))

**Summary:** The information obtained from the witness is critical to the safety of those involved and may be important to the investigation. The manner in which facts are elicited from a caller can influence the accuracy of the information obtained.

5. Separate witnesses and instruct them to avoid discussing details of the incident with other witnesses.
6. Canvass the area for other witnesses.

**Summary:** The preliminary investigation at the scene forms a sound basis for the accurate collection of information and evidence during the followup investigation.

#### B. Investigating the Scene (Preliminary Investigating Officer)

**Principle:** Preservation and documentation of the scene, including information from witnesses and physical evidence, are necessary for a thorough preliminary investigation. The methods used by the preliminary investigating officer have a direct impact on the amount and accuracy of the information obtained throughout the investigation.

**Policy:** The preliminary investigating officer shall obtain, preserve, and use the maximum amount of accurate information from the scene.

**Procedure:** After securing the scene and attending to any victims and injured persons, the preliminary investigating officer should:

1. Identify the perpetrator(s).
  - a. Determine the location of the perpetrator(s).
  - b. Detain or arrest the perpetrator(s) if still present at the scene.
2. Determine/classify what crime or incident has occurred.
3. Broadcast an updated description of the incident, perpetrator(s), and/or vehicle(s).
4. Verify the identity of the witness(es).

#### C. Obtaining Information From the Witness(es)

**Principle:** The manner in which the preliminary investigating officer obtains information from a witness has a direct impact on the amount and accuracy of that information.

**Policy:** The preliminary investigating officer shall obtain and accurately document and preserve information from the witness(es).

**Procedure:** When interviewing a witness, the preliminary investigating officer should:

1. Establish rapport with the witness.
2. Inquire about the witness' condition.
3. Use open-ended questions (e.g., "What can you tell me about the car?"); augment with closed-ended questions (e.g., "What color was the car?"). Avoid leading questions (e.g., "Was the car red?").
4. Clarify the information received with the witness.
5. Document information obtained from the witness, including the witness' identity, in a written report.
6. Encourage the witness to contact investigators with any further information.

#### A. Preparing Mug Books

**Summary:** Mug books must be objectively compiled to yield investigative leads that will be admissible in court.

#### B. Developing and Using Composite Images

**Note:** *Composite images can be beneficial investigative tools; however, they should not be used as stand-alone evidence and may not rise to the level of probable cause.*

**Principle:** Composites provide a depiction that may be used to develop investigative leads.

**Policy:** The person preparing the composite shall select and employ the composite technique in such a manner that the witness' description is reasonably depicted.

**Procedure:** The person preparing the composite should:

1. Assess the ability of the witness to provide a description of the perpetrator.
2. Select the procedure to be used from those available (e.g., identikit-type, artist, or computer-generated images).
3. Unless part of the procedure, avoid showing the witness any photos immediately prior to development of the composite.
4. Select an environment for conducting the procedure that minimizes distractions.
5. Conduct the procedure with each witness separately.
6. Determine with the witness whether the composite is a reasonable representation of the perpetrator.

**Summary:** The use of composite images can yield investigative leads in cases in which no suspect has been determined. Use of these procedures can facilitate obtaining from the witness a description that will enable the development of a reasonable likeness of the perpetrator.

#### C. Instructing the Witness

**Principle:** Instructions to the witness prior to conducting the procedure can facilitate the witness' recollection of the perpetrator.

**Policy:** The investigator/person conducting the procedure shall provide instructions to the witness prior to conducting the procedure.

**Procedure:**

**Mug Book:** The investigator/person conducting the procedure should:

1. Instruct each witness without other persons present.
2. Describe the mug book to the witness only as a "collection of photographs."
3. Instruct the witness that the person who committed the crime may or may not be present in the mug book.
4. Consider suggesting to the witness to think back to the event and his/her frame of mind at the time.
5. Instruct the witness to select a photograph if he/she can and to state how he/she knows the person if he/she can.
6. Assure the witness that regardless of whether he/she makes an identification, the police will continue to investigate the case.
7. 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.

## B. Initial (Preinterview) Contact With the Witness

**Principle:** A comfortable witness provides more information.

**Policy:** Investigators shall conduct themselves in a manner conducive to eliciting the most information from the witness.

**Procedure:** On meeting with the witness but prior to beginning the interview, the investigator should:

1. Develop rapport with the witness.
2. Inquire about the nature of the witness' prior law enforcement contact related to the incident.
3. Volunteer no specific information about the suspect or case.

**Summary:** Establishing a cooperative relationship with the witness likely will result in an interview that yields a greater amount of accurate information.

## C. Conducting the Interview

**Principle:** Interview techniques can facilitate witness memory and encourage communication both during and following the interview.

**Policy:** The investigator shall conduct a complete, efficient, and effective interview of the witness and encourage postinterview communication.

**Procedure:** During the interview, the investigator should:

1. Encourage the witness to volunteer information without prompting.
2. Encourage the witness to report all details, even if they seem trivial.

3. Ask open-ended questions (e.g., "What can you tell me about the car?"); augment with closed-ended, specific questions (e.g., "What color was the car?").
4. Avoid leading questions (e.g., "Was the car red?").
5. Caution the witness not to guess.
6. Ask the witness to mentally recreate the circumstances of the event (e.g., "Think about your feelings at the time").
7. Encourage nonverbal communication (e.g., drawings, gestures, objects).
8. Avoid interrupting the witness.
9. Encourage the witness to contact investigators when additional information is recalled.
10. Instruct the witness to avoid discussing details of the incident with other potential witnesses.
11. Encourage the witness to avoid contact with the media or exposure to media accounts concerning the incident.
12. Thank the witness for his/her cooperation.

**Summary:** Information elicited from the witness during the interview may provide investigative leads and other essential facts. The above interview procedures will enable the witness to provide the most accurate, complete description of the event and encourage the witness to report later recollections. Witnesses commonly recall additional information after the interview that may be critical to the investigation.

## D. Recording Witness Recollections

**Principle:** The record of the witness' statements accurately and completely reflects all information obtained and preserves the integrity of this evidence.

## Section IV. Field Identification Procedure (Showup)

### A. Conducting Showups

**Principle:** When circumstances require the prompt display of a single suspect to a witness, the inherent suggestiveness of the encounter can be minimized through the use of procedural safeguards.

**Policy:** The investigator shall employ procedures that avoid prejudicing the witness.

**Procedure:** When conducting a showup, the investigator should:

1. Determine and document, prior to the showup, a description of the perpetrator.
2. Consider transporting the witness to the location of the detained suspect to limit the legal impact of the suspect's detention.
3. When multiple witnesses are involved:
  - a. Separate witnesses and instruct them to avoid discussing details of the incident with other witnesses.
  - b. If a positive identification is obtained from one witness, consider using other identification procedures (e.g., lineup, photo array) for remaining witnesses.
4. Caution the witness that the person he/she is looking at may or may not be the perpetrator.
5. Obtain and document a statement of certainty for both identifications and nonidentifications.

**Summary:** The use of a showup can provide investigative information at an early stage, but the inherent suggestiveness of a showup requires careful use of procedural safeguards.

### B. Recording Showup Results

**Principle:** The record of the outcome of the field identification procedure accurately and completely reflects the identification results obtained from the witness.

**Policy:** When conducting a showup, the investigator shall preserve the outcome of the procedure by documenting any identification or nonidentification results obtained from the witness.

**Procedure:** When conducting a showup, the investigator should:

1. Document the time and location of the procedure.
2. Record both identification and nonidentification results in writing, including the witness' own words regarding how certain he/she is.

**Summary:** Preparing a complete and accurate record of the outcome of the showup improves the strength and credibility of the identification or nonidentification results obtained from the witness and can be a critical document in the investigation and any subsequent court proceedings.

## IV

6. Consider that complete uniformity of features is not required. Avoid using fillers who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
  7. Create a consistent appearance between the suspect and fillers with respect to any unique or unusual feature (e.g., scars, tattoos) used to describe the perpetrator by artificially adding or concealing that feature.
- Summary:** The above procedures will result in a photo or live lineup in which the suspect does not unduly stand out. An identification obtained through a lineup composed in this manner may have stronger evidentiary value than one obtained without these procedures.

## B. Instructing the Witness Prior to Viewing a Lineup

**Principle:** Instructions given to the witness prior to viewing a lineup can facilitate an identification or nonidentification based on his/her own memory.

**Policy:** Prior to presenting a lineup, the investigator shall provide instructions to the witness to ensure the witness understands that the purpose of the identification procedure is to exculpate the innocent as well as to identify the actual perpetrator.

**Procedure:**

**Photo Lineup:** Prior to presenting a photo lineup, the investigator should:

1. Instruct the witness that he/she will be asked to view a set of photographs.

## B. Instructing the Witness Prior to Viewing a Lineup

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.

**Live Lineup:** Prior to presenting a live lineup, the investigator should:

1. Instruct the witness that he/she will be asked to view a group of individuals.
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 present in the lineup 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 present in the group of individuals.
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.

6. If an identification is made, avoid reporting to the witness any information regarding the individual he/she has selected prior to obtaining the witness' statement of certainty.
7. Record any identification results and witness' statement of certainty as outlined in subsection D, "Recording Identification Results."
8. Document in writing the photo lineup procedures, including:
  - a. Identification information and sources of all photos used.
  - b. Names of all persons present at the photo lineup.
  - c. Date and time of the identification procedure.
9. Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.

**Simultaneous**

**Live Lineup:** When presenting a simultaneous live lineup, the investigator/lineup administrator should:

1. Provide viewing instructions to the witness as outlined in subsection B, "Instructing the Witness Prior to Viewing a Lineup."
2. Instruct all those present at the lineup not to suggest in any way the position or identity of the suspect in the lineup.
3. Ensure that any identification actions (e.g., speaking, moving) are performed by all members of the lineup.
4. Avoid saying anything to the witness that may influence the witness' selection.
5. If an identification is made, avoid reporting to the witness any information regarding the individual he/she has selected prior to obtaining the witness' statement of certainty.

**C. Conducting the Identification Procedure**

6. Record any identification results and witness' statement of certainty as outlined in subsection D, "Recording Identification Results."
7. Document the lineup in writing, including:
  - a. Identification information of lineup participants.
  - b. Names of all persons present at the lineup.
  - c. Date and time the identification procedure was conducted.
8. Document the lineup by photo or video. This documentation should be of a quality that represents the lineup clearly and fairly.
9. Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.

**Sequential**

**Live Lineup:** When presenting a sequential live lineup, the lineup administrator/investigator should:

1. Provide viewing instructions to the witness as outlined in subsection B, "Instructing the Witness Prior to Viewing a Lineup."
2. Provide the following *additional* viewing instructions to the witness:
  - a. Individuals will be viewed *one at a time*.
  - b. The individuals will be presented in random order.
  - c. Take as much time as needed in making a decision about each individual before moving to the next one.
  - d. If the person who committed the crime is present, identify him/her.

## Appendixes

### Appendix A

#### Further Reading

### Appendix A. Further Reading

- Comros, E., T. Lundregan, N. Miller, and T. McEwen. *Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence to Establish Innocence After Trial*. Washington, DC: U.S. Department of Justice, National Institute of Justice, 1996, NCJ 161258.
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### Appendix B

#### Reviewer List

National Association of State Alcohol and Drug Abuse Directors  
National Association of Women Judges  
National Black Police Association  
National Center for State Courts  
National Conference of State Legislators  
National Council on Crime and Delinquency  
National Crime Prevention Council  
National Criminal Justice Association  
National District Attorneys Association  
National Governors Association  
National Institute of Standards and Technology Office of Law Enforcement Standards  
National Law Enforcement and Corrections Technology Centers  
National Law Enforcement Council  
National League of Cities  
National Legal Aid & Defender Association

National Organization of Black Law Enforcement Executives  
National Organization for Victim Assistance  
National Sheriffs' Association  
National Victim Center  
New York State Police  
Oneida County (New York) Sheriff's Office  
Oneida Indian Nation Police  
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Police Foundation  
Royal Canadian Mounted Police Training Academy  
Tennessee Law Enforcement  
United States Conference of Mayors  
United States Secret Service  
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