

**MINUTES OF THE MEETING OF THE POLICE & INVESTIGATIONS
SUBCOMMITTEE #1 OF THE CAPITAL PUNISHMENT REFORM STUDY
COMMITTEE**

June 21, 2006

**University of Chicago Law School
Chicago, IL**

Notice of the meeting was sent to all members and posted on the Illinois Criminal Justice Information Authority website.

Present: Subcommittee members: Chip Coldren, Gerry Nora and Geof Stone; legal counsel: Peter Baroni; non-subcommittee members: Leigh Bienen (via teleconference)

The meeting was called to order at 2:10 p.m.

Chip Coldren opened the meeting by reviewing the goal of this special meeting of the Subcommittee – to discuss each Subcommittee members’ comments on the “Report to the Legislature of the State of Illinois: The Illinois Pilot Program on Sequential Double-Blind Identification Procedures.” Pursuant to Illinois law (725 ILCS 5/107A-10), the Illinois State Police commissioned the Chicago Police Department to conduct a pilot study on “the effectiveness of the sequential method for photograph and live lineup procedures” involving three Illinois jurisdictions. Chip suggested that each subcommittee member present their comments on the report, then the subcommittee would discuss whether to prepare a review of the report for the full Committee, or whether any further review or related activities were warranted.

Chip offered his review of the report as follows. He noted three key sections in the report, one that responds to the question “Should we do it?” [meaning, should law enforcement adopt double-blind sequential line-ups as the preferred method in capital cases?], another that responds to the question, “Can we do it?” [meaning, is it practical and feasible for law enforcement to adopt this line-up method?], and the set of recommendations at the end of the report.

Should we [law enforcement] do it? – The study does not address this question with sufficient scientific rigor to ascertain whether the line-up method (e.g., sequential or simultaneous) or the line up administrator (e.g., blind vs. non-blind) caused the observed differences in identification rates (suspect identification, filler identification, and no identification). Additional studies with more controls are need, so that the causes of any observed differences in outcomes can be isolated. The study(ies) should be designed so

that the method of administration (blind) is held constant and the line-up method is varied (sequential v. simultaneous), with random assignment of cases to either line-up method, pre- and post-testing within groups, and the study should be administered by a research scientist with extensive experience in the administration of randomized studies. In addition, Chip suggested that researchers measure the rate of ‘true’ identification, meaning that in addition to identifying whether witnesses identify the suspects selected by law enforcement, they should measure how often the suspects are in fact convicted of the crimes. Researchers should continue comparing sub-categories of cases according to whether the witness knows or does not know the suspect, suspect race vs. witness race, photo spread vs. live line-up, and the different settings in which the line-ups take place.

Can we [law enforcement] do it? – Chip expressed a concern about the apparent need to balance efficiency with accuracy in this matter, especially since the accuracy of line-up identifications seems to have figured heavily into the number of murder convictions that have been overturned. Gerry Nora suggested caution regarding this matter. He noted that he is aware that faulty identifications generally have figured into capital convictions that have been overturned, he is not certain that it is line-up identifications that are at issue, and, he explained, he cannot find evidence in Illinois that suggests faulty line-up identifications are the main reason that any murder convictions have been overturned. Chip noted further that the report on the pilot program provides little information on the oversight of the implementation of the study, beyond the training provided to study participants in the three jurisdictions. In addition, the pilot study report did not address the effectiveness of the training provided. The evaluation surveys discussed in the report were administered to police only, not to witnesses or any other participants; in fact, they allowed the police participants to assess how the witnesses experienced the double-blind sequential line-up procedures, rather than surveying the witnesses themselves. Finally, Chip noted that the report described a strong negative opinion from law enforcement regarding the double-blind sequential procedure, and commented that it is not uncommon for law enforcement practitioners to have strong initial negative reactions to reforms or changes in police procedures, and then to observe this negative reaction dissipate (or change significantly) as time passes and experience is gained. This is true of recent policing innovations such as community policing, racial profiling reporting systems, and video taping of various police procedures. Thus, Chip suggested that the research did not thoroughly study the practical issues relating to sequential, double-blind line-up procedures, gave substantial weight to law enforcement and not other reactions to the procedures, and gave substantial weight to early negative reactions by law enforcement that are likely to change over time.

Pilot study recommendations – Chip stated that he agreed with the recommendations made in the pilot study report, though he felt that they should have been more specific and detailed, especially regarding the anticipated outcomes and benefits from each recommendation. He agreed that line-up instructions should be further studied. If further work is done on specific instructions, types of instructions, or methods of delivering instructions, these methods should be compared and analyzed, and, again, linked to specific outcomes desired or anticipated based on the instructions tested. He agreed that

technological applications in line-up administration should be explored seriously; technological applications can be helpful in selecting fillers for line-ups (using imaging techniques), in standardizing line-up procedures (e.g., use of laptops and standard instructions for conducting line-ups), and in recording line-ups. Chip also suggested that remote video technology might be helpful in solving problems with double-blind administration. Chip noted his general agreement with the other recommendations in the report.

Geof observed that the key chart in the report was Table 3.a, “Effects of Simultaneous v. Sequential Presentation on Identification Rates.” Geof noted that the title was misleading because the table implied that the data represented a comparison of simultaneous presentations when, in fact, there were four rather than two variables. That is, the study compared not simultaneous v. sequential presentations, but simultaneous non-blind presentations v. sequential double-blind presentations. Geof pointed out that this is important because it is inconceivable that non-blind presentations could be better than double-blind presentations. Indeed, double-blind presentations *cannot* create any bias in the identification, whereas non-blind presentations obviously can create a bias. Put differently, in terms of accuracy of identification, double-blind presentations are always better than non-blind presentations. The only questions about whether to use double-blind presentations is whether they are practical and affordable. They are unquestionably preferable in terms of accuracy.

Geof noted the proper way to determine how much more accurate double-blind presentations are than non-blind presentations is to compare apples to apples. That is, to compare non-blind sequential presentations to double-blind sequential presentations, or non-blind simultaneous presentations to double-blind simultaneous presentations. Such comparisons would be a good test of accuracy because the difference between the double-blind and non-blind presentations would reflect the degree of bias in non-blind presentations. This, Geof observed, is what the study should have examined.

Geof reasoned further that the table is misleading insofar as it appears to suggest that simultaneous presentations are better than sequential presentations. This is true in two respects. First, Geof pointed out that the table shows that the suspect was identified in 60% of the simultaneous presentations but in only 45% of the sequential presentations. Because of the assumption that identified suspects were guilty, the implication was that simultaneous presentations result in identification of the guilty person 33% more often than sequential presentations. Geof argued that this is entirely false. The sequential presentations were done using the double-blind method and the simultaneous presentations were done using the non-blind method. Because the double-blind method cannot be less accurate than the non-blind method, the large differential between simultaneous and sequential presentations in the study has to be due to one of two factors: Either simultaneous presentations are *much* more accurate than sequential presentations, or the bias inherent in simultaneous presentations leads witnesses to identify the suspect 33% more often than he would *without* the bias (or, of course, it could be some combination of the two). Geof argued that the most important possible implication of the study is not the simultaneous presentation is more accurate than

sequential presentation, but that investigator bias has a *dramatic* impact on the eyewitness identifications in the non-blind situation.

Second, Geof noted that the table showed that eyewitnesses misidentified fillers more than three times more often in sequential than in simultaneous presentations (9.2% v. 2.8%). The superficial implication is, again, that sequential presentations are risky. But, again, this misunderstands the significance of the data. Unless simultaneous presentations are much more reliable than sequential presentations, what the table actually shows is that investigators in non-blind presentations (all the simultaneous presentations) were steering eyewitnesses away from the fillers and to the suspects, thus explaining the high number of identifications of suspects and the lower number of identifications of fillers.

Geof acknowledged that there is no way to know for certain what is happening in these data. The correct interpretation depends on information not provided: The relative accuracy of double-blind v. non-blind presentations or the relative accuracy of simultaneous v. sequential presentations. Geof suggested a simple way to get at this question. Because the double-blind sequential presentations in the study could not be affected by investigator bias, the only possible distorting effect in those presentations would be from the order in which the individuals were presented. That is, witnesses may tend to identify the first or the second or the last individual. Assuming the suspect is randomly placed in the sequential presentation, the eyewitness identification should be randomly distributed among the number of positions in the presentation. If that is so, then there is no distortion and the double-blind sequential format would clearly be as good as it gets. If there is a distortion (that is, if the eyewitnesses do tend to select the person in, say, the second position in the sequence), then that data is a measure of the overall inaccuracy of double-blind sequential presentations. Geof suggested that the study examine that question, which is quite simple to do.

Gerry Nora began his discussion by noting that he has read everything he could find about this study and he voiced support for all the study recommendations. On a pragmatic note, he suggested that the subcommittee be cautious about “setting the grounds for its own impeachment,” particularly regarding the recommendation that research scientists get involved. Gerry noted that Geoff Stone makes a good point, and that you would almost always prefer a double-blind sequential line-up procedure, but this will be difficult outside of Cook County. Gerry discussed the premise of mis-identifications (of suspects) caused by non-neutral line-up administrators, and suggested that in many instances the suspect him/her self is just as likely (if not more likely) to be giving visual cues to the witness reviewing the lineup. Gerry also noted that there is a significant difference between photo spreads (which are not based on a determination of probable cause) and live line-ups (which must be based on probable cause, in Illinois). Gerry explained that as a matter of experience or gut feeling, he prefers live line-ups. Finally, Gerry restated his support for the notion that the field will benefit from additional study of these matters, and for the pilot study recommendations.

Leigh Bienen offered several comments. She is leery of the Committee endorsing such a study when its reliability has been questioned. Any recommendations of this

subcommittee or the larger Committee should be very specific. She views the technological solutions as interesting and possibly helpful.

Geof Stone noted that he has grave questions about the effects of non-double blind procedures of any kind. Returning our attention to Table 3.a on page 38 of the pilot study report, he explained that this table suggests that 95% of identifications are 'accurate' under the simultaneous non-blind method (approximately 60 suspect identifications divided by approximately 63 total identifications) and that 83% of identifications are 'accurate' under the sequential non-blind method (approximately 45 suspect identifications divided by approximately 54 total identifications). This is a large difference in the percentage of suspect identifications, but we don't know what's causing them due to the inability to disentangle the effects of blind vs. non-blind administration in the pilot study.

Geof suggested that an analysis of the outcomes of the sequential, double-blind method may help us understand this issue. If, for example, a pattern is found in the identification of suspects under the sequential, double-blind method, then we would suspect that accuracy of this method. In other words, if the sequential double-blind method produces a random pattern of outcomes regarding the sequential order of suspects identified (assuming that suspects are placed in random order in the sequence), then we would have more confidence in the method. On the other hand, if an analysis of the outcome data for the sequential double-blind method shows that witnesses pick the first or second individual in the sequence more often than any other, then there would be evidence of bias in the method.

Chip agreed to contact Sheri Mecklenberg at the Chicago Police Department to see if the data can be made available for further analysis along these lines.

Regarding next steps regarding the review of the pilot study report, the Subcommittee decided that the details and complications surrounding this issue are significant and that the Subcommittee needs to spend additional time reviewing and discussing them before reporting to the full Committee. The Subcommittee agreed to conduct further review of the report and discuss it again at the next meeting.

The next Subcommittee meeting is set for August 7, 2006 at 2:00 p.m. at the University of Chicago Law School, 1111 East 60th Street, Chicago, IL 60637.

The Subcommittee adjourned at 3:30 p.m.