

SCR149,SD1

Testimony



April 14, 2011

To: Senator Clayton Hee, Chair  
Senator Maile Shimabukuro, Vice Chair and  
Members of the Committee on Judiciary and Labor

From: Jeanne Ohta, Executive Director

Re: SCR 149 SD1 Adopt New Eyewitness ID Procedures  
Hearing: April 14, 2011, 10:00 a.m., Conf. Room 016

Position: SUPPORT

The Drug Policy Forum of Hawai`i supports SCR 149 SD1 which encourages the attorney general and the law enforcement coalition to adopt new eyewitness identification procedures to reduce the rate of erroneous eyewitness identifications.

Recent reports have shown that eyewitness testimony can often be inaccurate and that law enforcement officials can unintentionally influence eyewitness identifications and add to the inaccuracy.

New procedures have been suggested that would help reduce faulty identifications. We hope that the state attorney general and state and local law enforcement agencies use these procedures to improve our criminal justice system and to prevent conviction of the innocent.

Thank you for this opportunity to provide testimony.

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# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON JUDICIARY AND LABOR

Sen. Clayton Hee, Chair

Sen. Maile Shimabukuro, Vice Chair

Thursday, April 14, 2010

10:00 a.m.

Room 016

### SCR 149 SD1 - ENCOURAGING NEW EYEWITNESS IDENTIFICATION PROCEDURES SUPPORT

<http://www.capitol.hawaii.gov/emailtestimony>

Aloha Chair Hee, Vice Chair Shimabukuro and Members of the Committee!

My name is Kat Brady and I am the Coordinator Community Alliance on Prisons, a community initiative promoting smart justice policies for more than a decade. This testimony is respectfully offered on behalf of the 6,000 Hawai'i individuals living behind bars, always mindful that almost 1,800 individuals are serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

SCR 149 SD1 encourages the attorney general and the law enforcement coalition to adopt new eyewitness identification procedures to reduce the rate of erroneous eyewitness identifications.

Community Alliance on Prisons supports this measure in the name of justice. The Hawai'i Innocence Project recently represented Alvin Jardine, a gentleman on Maui<sup>1</sup> who was imprisoned for twenty years. Mr. Jardine was convicted on eyewitness identification for a crime that the DNA evidence now says he did not commit. This and many other cases around the U.S. have highlighted the problem with current eyewitness identification procedures.

Experts have recently acknowledged the problems with eyewitness identification.

According to the Illinois Governor's Commission on Capital Punishment, *"The fallibility of eyewitness testimony has become increasingly well-documented in both academic literature and courts of law."*<sup>2</sup>

Mario Gaboury, director of the Crime Victim Study Center at the University of New Haven stated, *"Eyewitness testimony is often inaccurate. I don't think anyone understood the magnitude of the problem until the past few years."*<sup>3</sup>

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<sup>1</sup> **Years of toil led to freedom for innocent man** *The release of a Maui inmate is the first success by the Hawaii Innocence Project*, By Michael Tsai, POSTED: 01:30 a.m. HST, Feb 13, 2011.

[http://www.staradvertiser.com/news/20110213\\_Years\\_of\\_toil\\_led\\_to\\_freedom\\_for\\_innocent\\_man.html](http://www.staradvertiser.com/news/20110213_Years_of_toil_led_to_freedom_for_innocent_man.html)

<sup>2</sup> Report of The (Illinois) Governor's Commission on Capital Punishment, April 2002.

<sup>3</sup> New Haven Register, *"U.S. Navy Study: Eyewitnesses Unreliable,"* June 21, 2004.

The National Institute of Justice Journal No. 258<sup>4</sup> stated:

“At its most basic level, a police lineup involves placing a suspect among people not suspected of committing the crime (fillers) and asking the eyewitness if he or she can identify the perpetrator. This can be done using a live lineup of people or, as more commonly done in U.S. police departments, a lineup of photographs. Live lineups typically use five or six people (a suspect plus four or five fillers) and photo lineups six or more photographs.<sup>5</sup>

There are two common types of lineups: simultaneous and sequential. In a simultaneous lineup (used most often in police departments around the country),<sup>6</sup> the eyewitness views all the people or photos at the same time. In a sequential lineup, people or photographs are presented to the witness one at a time.

Typically, the law enforcement official or lineup administrator knows who the suspect is.<sup>7</sup> Experts suggest that lineup administrators might—whether purposefully or inadvertently—give the witness verbal or nonverbal cues as to the identity of the suspect. For instance, if an eyewitness utters the number of a filler, the lineup administrator may say to the witness, “Take your time . . . . Make sure you look at all the photos.” Such a statement may effectively lead the witness away from the filler.<sup>8</sup> In a “double-blind” lineup, however, neither the administrator nor the witness knows the identity of the suspect, and so the administrator cannot influence the witness in any way.<sup>9</sup> (See following graphic, “Live Police Lineups: How Do They Work?”)

Community Alliance on Prisons supports having Hawai'i's law enforcement agencies evaluate their current line-up procedures to ensure that they are in compliance with the most up-to-date protocols, such as those put forth by the National Institute for Science.

Community Alliance on Prisons asserts that in the interest of justice, we should always be looking at ways to update our system to ensure that justice is served. Mahalo for this opportunity to share our support for this measure.

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<sup>4</sup> *Police Lineups: Making Eyewitness Identification More Reliable*, NIJ Journal No. 258 • October 2007, by Beth Schuster, Managing editor of the *NIJ Journal*.

<http://www.ojp.usdoj.gov/nij/journals/258/police-lineups.htm>

<sup>5</sup> Wells, G.L., A. Memon, and S.D. Penrod, “*Eyewitness Evidence: Improving Its Probative Value*,” *Psychological Science in the Public Interest* 7 (2) (November 2006): 45-75.

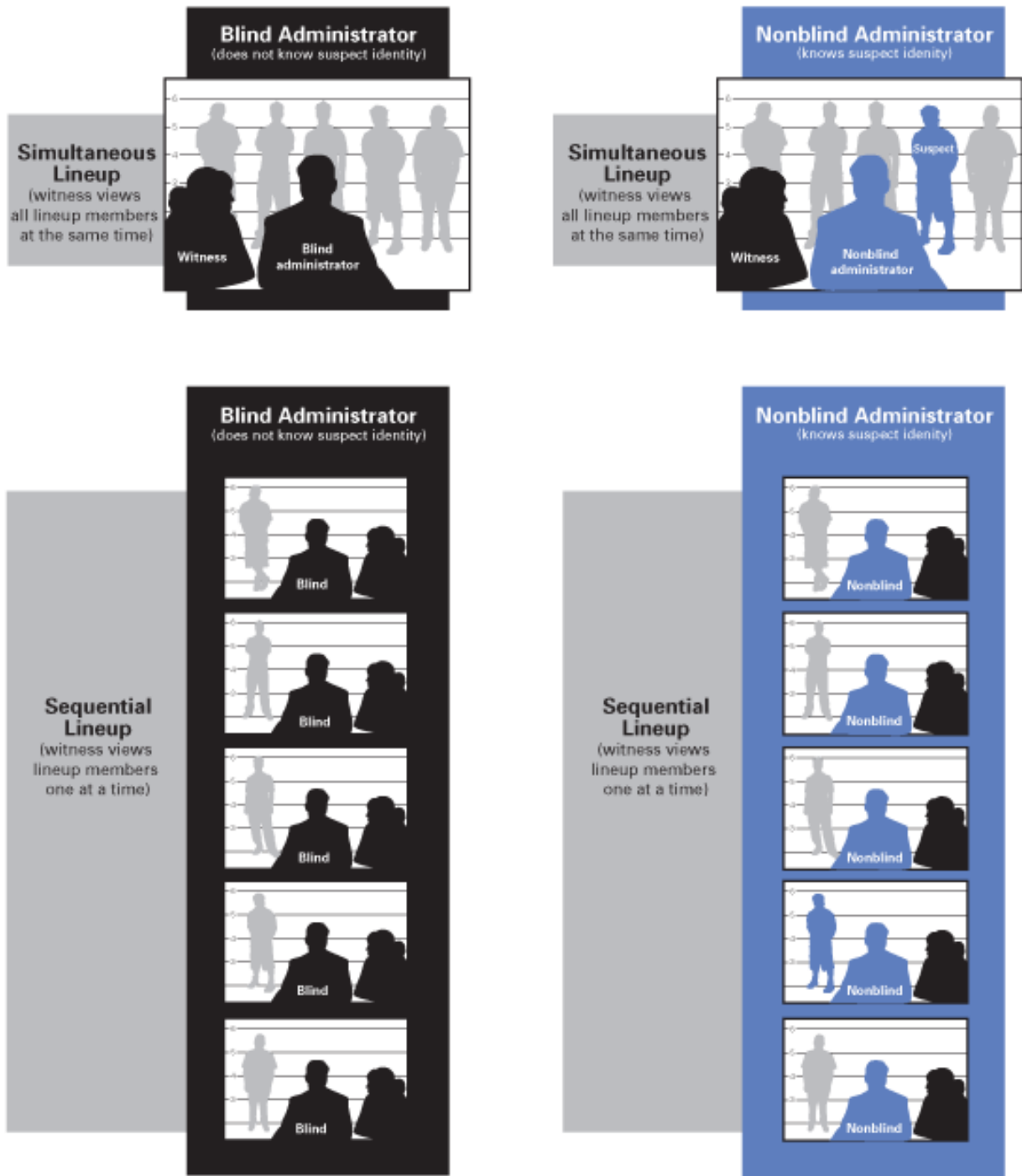
<sup>6</sup> Wells, G.L., and E. Olson, “*Eyewitness Testimony*,” *Annual Review of Psychology* 54 (2003): 277-295.

<sup>7</sup> Wells, Memon, and Penrod, “*Eyewitness Evidence: Improving Its Probative Value*,” 63.

<sup>8</sup> Gary L. Wells' comments on the Mecklenburg Report (see note 8), available at [www.psychology.iastate.edu/faculty/gwells/Illinois\\_Project\\_Wells\\_comments.pdf](http://www.psychology.iastate.edu/faculty/gwells/Illinois_Project_Wells_comments.pdf) (accessed June 19, 2007).

<sup>9</sup> Mecklenburg, S.H., *Report to the Legislature of the State of Illinois: The Illinois Pilot Program on Sequential Double-Blind Identification Procedures*, submitted March 17, 2006, available at [www.chicagopolice.org/IL%20Pilot%20on%20Eyewitness%20ID.pdf](http://www.chicagopolice.org/IL%20Pilot%20on%20Eyewitness%20ID.pdf).

## Live Police Lineups: How Do They Work?\*



\* Most U.S. police departments use photo lineups. The same concepts depicted in this graphic—simultaneous and sequential, blind and nonblind—apply in photo lineups.

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**To:** [JDLTestimony](#)  
**Cc:** [maukalani78@hotmail.com](mailto:maukalani78@hotmail.com)  
**Subject:** Testimony for SCR149 on 4/14/2011 10:00:00 AM  
**Date:** Tuesday, April 12, 2011 3:06:44 PM

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Testimony for JDL 4/14/2011 10:00:00 AM SCR149

Conference room: 016  
Testifier position: support  
Testifier will be present: No  
Submitted by: E. Funakoshi  
Organization: Individual  
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Submitted on: 4/12/2011

Comments:

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**Subject:** Testimony for SCR149 on 4/14/2011 10:00:00 AM  
**Date:** Wednesday, April 13, 2011 8:23:18 AM

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Testimony for JDL 4/14/2011 10:00:00 AM SCR149

Conference room: 016  
Testifier position: support  
Testifier will be present: Yes  
Submitted by: Carolyn Aguilar  
Organization: Individual  
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Phone:  
E-mail: [carmat97@aol.com](mailto:carmat97@aol.com)  
Submitted on: 4/13/2011

Comments:

Dear committee members,

I am a third year law student at the University of Hawaii, William S. Richardson School of Law. Through my studies, I have learned that Hawaii's police agencies are using older, more inefficient police eyewitness identification procedures that are sadly out of touch with best practices. Technology has advanced an incredible amount over the years and newer and better DNA testing, for example, has revealed some of the problems with older forms of evidence such as eyewitness identification procedures. Seventy-five percent of wrongful convictions were the result of faulty eyewitness identifications. Eyewitness identification procedures need to be updated to keep in line with today's best practices to ensure that we are putting the right criminals away. Please pass SCR149 to ask that Hawaii's police agencies consider using better eyewitness identification practices. Thank you for this opportunity to testify.

Robert K. Merce  
2467 Aha Aina Place  
Honolulu, Hawai`i 96821  
January 25, 2011  
(808) 732-7430

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**COMMITTEE ON JUDICIARY AND LABOR**

Sen. Clayton Hee, Chair

Sen. Maile S.L. Shimabukuro, Vice Chair

Thursday, April 14, 2011

10:00 AM

Room 016

SCR 149 SD1 - ENCOURAGING NEW EYEWITNESS IDENTIFICATION PROCEDURES  
SUPPORT

Dear Chair Hee, Vice Chair Shimabukuro, and Members of the Committee:

I am a retired member of the Hawaii State Bar. Before I retired, my practice included the representation of prison inmates. That experience made me aware of the many ways in which our justice system is failing inmates and the community, and since retiring I have decided to try to do something about it.

I support SCR 149 SD1. Eyewitness identification is one area of the law where we have empirical evidence to guide us. We know for a fact that eyewitness identifications, even under the most neutral conditions, tend to be unreliable and untrustworthy, particularly when they involve someone of a different race or ethnic group.<sup>1</sup> We also have a data that tells us what we can do to reduce the number of misidentifications and thereby protect the innocent and give everyone more confidence that those who are convicted based on eyewitness testimony are truly guilty. We should encourage (or better yet insist) that law enforcement agencies use best practices in eyewitness identification, just as we should encourage (or insist) that doctors use best practices in treating heart disease and cancer. It's a matter of common sense.

Thank you for allowing me to testify.

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<sup>1</sup> See, e.g., B. Scheck, P. Neufeld, J. Dwyer, *Actual Innocence* 53-100 (Signet edition 2001); Wells, G.L., Small, M., Penrod, S., *Eyewitness Identification Procedures: Recommendations for Lineups and Photospreads*. *Law and Human Behavior*, 22:6 (1998). Note, *Did Your Eyes Deceive You? Expert Psychological Testimony on the Unreliability of Eyewitness Identification* 29 *Stan. L.Rev.* 969 (1977).