

**SR 89**

**SCR 149**

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS AND MILITARY AFFAIRS

Sen. Will Espero, Chair

Sen. Michelle Kidani, Vice Chair

Wednesday, March 30, 2010

2:50 p.m.

Room 224

SCR 149/SR 89 - IMPROVING EYEWITNESS IDENTIFICATION

SUPPORT

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

Aloha Chair Espero, Vice Chair Kidani 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/SR 89 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.

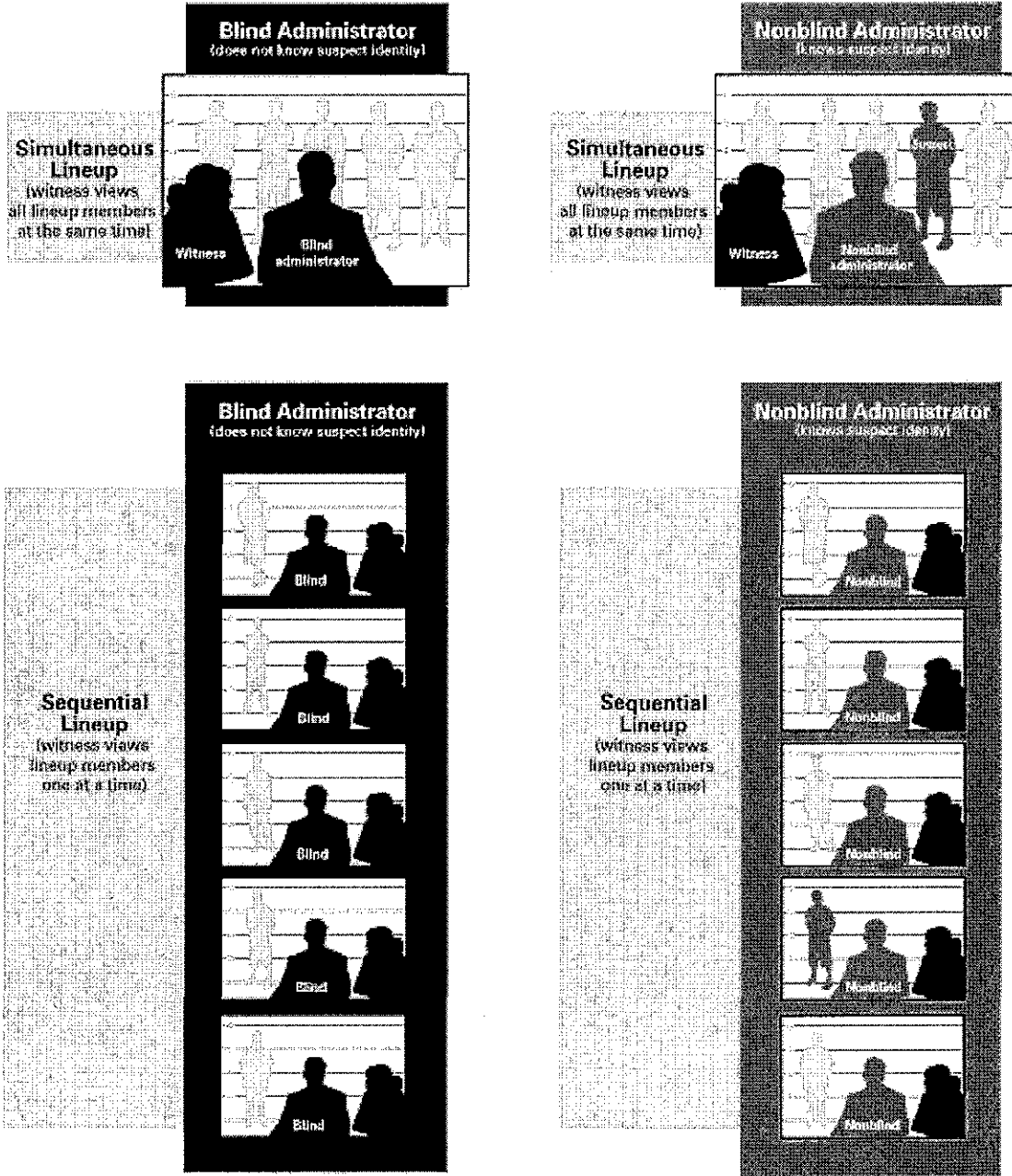
<sup>6</sup> Wells, G.L., and E. Olson, "Eyewitness Testimony," *Annual Review of Psychology* 54 (2003): 277-295.

<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.



the  
**Drug Policy  
Forum**  
of hawaii

March 31, 2011

To: Senator Will Espero, Chair  
Senator Michelle Kidani, Vice Chair and  
Members of the Committee on Public Safety, Government Operations, and  
Military Affairs

From: Jeanne Ohta, Executive Director

Re: SCR 149/SR 89 Consider Better Eyewitness ID Procedures  
Hearing: March 31, 2011, 2:50 p.m., Conf. Room 224

Position: SUPPORT

The Drug Policy Forum of Hawai'i supports SCR 149/SR 89 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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I strongly support SCR 149 and feel this change in processes will serve the best interests of persons accused and will eliminate potential errors resulting from flawed eyewitness identification and in potential biases.

Thank you,

Summer Gillenwater Shelverton

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 29, 2011 1:22 PM  
**To:** PGM Testimony  
**Cc:** carmat97@aol.com  
**Subject:** Testimony for SCR149 on 3/31/2011 2:50:00 PM

Testimony for PGM 3/31/2011 2:50:00 PM SCR149

Conference room: 224  
Testifier position: support  
Testifier will be present: No  
Submitted by: Carolyn Aguilar  
Organization: Individual  
Address:  
Phone:  
E-mail: [carmat97@aol.com](mailto:carmat97@aol.com)  
Submitted on: 3/29/2011

**Comments:**

New technological advancements in DNA science have revealed that our prior eyewitness identification procedures are flawed in that innocent people are being wrongly convicted. By updating our eyewitness identification procedures, we can keep with the latest and best practices to better ensure that the real criminals are found and caught and ultimately that our streets are safer. Please support passage of SCR149/SR89. Thank you for this opportunity to testify.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 30, 2011 2:12 PM  
**To:** PGM Testimony  
**Cc:** scdean@hawaii.edu  
**Subject:** Testimony for SCR149 on 3/31/2011 2:50:00 PM  
**Attachments:** Testimony Supporting SCR149.pdf

Testimony for PGM 3/31/2011 2:50:00 PM SCR149

Conference room: 224  
Testifier position: support  
Testifier will be present: No  
Submitted by: Sarah Dean  
Organization: Individual  
Address:  
Phone:  
E-mail: [scdean@hawaii.edu](mailto:scdean@hawaii.edu)  
Submitted on: 3/30/2011

Comments:



I strongly support SCR 149, the resolution to alter police eyewitness identification procedures. A wealth of scientific studies has been performed on the differences between blind vs. nonblind administration of lineups and sequential vs. simultaneous lineups. Both blind lineup administration and sequential lineups increase the chances that a witness will make a **correct** identification in a lineup. Witnesses making correct lineup choices is a priority in our justice system that aims to punish the guilty, and not the innocent.

Using sequential lineups instead of simultaneous lineups protects the innocent and discourages false identifications. According to Steblay et al., "correct rejection rates [in other words, not picking an innocent suspect out of a lineup] are significantly higher for sequential than simultaneous lineups." Therefore, sequential lineups are an essential part of eyewitness identification procedures that aim to protect the innocent. See Nancy Steblay et al.'s analysis titled "Eyewitness Accuracy Rates in Sequential and Simultaneous Lineup Presentations: A Meta-Analytic Comparison," published in Law and Human Behavior, Vol. 25, No. 5, October 2001. See also Amy Klobuchar and Hilary Lindell Caligiuri's article titled "Protecting the Innocent/Convicting the Guilty: Hennepin County's Pilot Project in Blind Sequential Eyewitness Identification," available online at [www.wmitchell.edu/lawreview/Volume32/Issue1/1Klobuchar.pdf](http://www.wmitchell.edu/lawreview/Volume32/Issue1/1Klobuchar.pdf).

Blind lineup administration procedures are also crucial in increasing the odds that witnesses will make correct identifications. Officers who administer lineups certainly do not intend to give away who the suspect is, but still give subconscious, or inadvertent, cues to eyewitnesses regardless of their intention. "[S]cientists recommend the use of a blind administrator when conducting a photographic lineup," because administrators who know the identity of the suspect give witnesses inadvertent cues as to who the suspect is. Such inadvertent cues are "a factor in increasing the likelihood of false identifications." See Amy Klobuchar and Hilary Lindell Caligiuri's article titled "Protecting the Innocent/Convicting the Guilty: Hennepin County's Pilot Project in Blind Sequential Eyewitness Identification," available online at [www.wmitchell.edu/lawreview/Volume32/Issue1/1Klobuchar.pdf](http://www.wmitchell.edu/lawreview/Volume32/Issue1/1Klobuchar.pdf). See also Mark R. Phillips, et al.'s article, "Double-Blind Photoarray Administration as a Safeguard Against Investigator Bias," published in the *Journal of Applied Psychology*, Vol. 84, No. 6, 1999, available online at [web.jjay.cuny.edu/~mkovera/Phillips.pdf](http://web.jjay.cuny.edu/~mkovera/Phillips.pdf).

I hope you consider these points and pass this resolution, which will increase eyewitness accuracy and decrease the number of mistaken/false identifications that are made. Thank you.