

By Rebecca Kanable

Honest Lies?

The impact of memory on criminal investigations

Why does it seem that some people remember everything and others can't remember where they put their car keys?

Human memory is extremely complex, describes Gary Wells, a professor of liberal arts and sciences at the Iowa State University Department of Psychology. "On one hand, we're often amazed at how well memory can work," he says. "On the other hand, we're amazed at how bad it can be."

Eyewitness memory, however, puts everyone on the same level of ability. "We don't find a lot of evidence that some people are great at remembering what happened as an eyewitness or some are terrible at it," says Wells, who has had an eye on accuracy in eyewitness identification since 1976. "Instead, it is the circumstances that dictate how good or bad people are going to be at remembering what happened and identifying who committed the crime."

When a crime is committed, witnesses are generally exposed to a stranger, usually for a short amount of time and often there is fear or stress involved. These things do not improve memory; they harm memory, Wells says. Eyewitnesses generally are good at remembering the gist of information rather than the details, he says. For example, they might remember that a person was male, large and had short hair.

"You extract and store less information than your intuition tells you," says Wells, who holds a doctorate in experimental social psychology. "In part that's because it's almost like you have software in your head that fills in the gaps in memory. As a result, inferences and guesses help create what seems like a pretty clear and complete picture."

Often memory is thought of as a video recording. That's not accurate, he says. He describes: "Memory is more of a construction; it's a very active, interpretive kind of process. After you've witnessed something, that memory can still change, adding, subtracting or replacing things. And you don't realize these changes are happening. You see your memory as stable even if something altered your memory."

Since eyewitness evidence is fragile, like other types of evidence, eyewitness evidence must be handled with care. If not, memory can easily be contaminated when conducting interviews, creating composites and doing lineups.

Interviews

In an eyewitness situation, most memory loss occurs within a matter of minutes.

Police officers as eyewitnesses

Given a brief encounter with a suspect, officers are no better at later picking that person out of a lineup than anybody else is, says Gary Wells, professor at Iowa State University. Police officers do not receive eyewitness identification training, and when experiments have been conducted, the training wasn't particularly effective, he says.

Something that police officers are better at than most people is noticing aspects of a scene that are cause for suspicion, Wells says. For example, they'll notice someone who is kind of slouching down in the car rather than sitting up straight.

"You'll lose a lot more information in the first 48 hours than you'll lose in the next 48, because the loss of memory has a diminishing function with time as it goes by," Wells explains.

Memory is not lost in a steadily declining slope. With the passage of time, memory deteriorates in a negatively decelerating curve, not a straight line.

"Think of a slide with the top of the slide on your left and time going across the bottom," he says. "You get a lot of loss in memory fairly quickly and as time goes by, you get less and less of a loss in memory."

Since details start to become lost pretty quickly, as soon as they are safe and able, eyewitnesses should write down everything they can remember. Bank tellers, for example, are advised to do this as soon as a bank robber flees the scene.

Police also should move quickly to do interviews as soon as possible, but Wells warns, "You have to be very careful how you try to extract memory information from witnesses."

A principle that needs to be more readily applied to interviews is to not press the witnesses. They should be able to describe things freely, on their own, he says.

Wells first gives an example of bad questioning:

The interviewer asks, "What did the person look like?"

The witness replies, "Well, kind of heavysset, average build, short, dark hair, white, male, um..."

Many police interviewers want more, so they're going to ask, "Did he have facial hair?"

If you ask the witness that question, he is going to come up with some kind of answer: "Well, no, I don't think so."

The interviewer asks, "What color were his eyes?"

Again, there's a good chance the witness is going to come up with an answer, but every time a witness comes up with an answer, the interviewer is mucking with the witness' memory. When pressing for specifics, the interviewer is starting to influence how the witness remembers that person and what his memory is.

If a witness really knew if a suspect had facial hair or the color of the suspect's eyes, the witness would have said. Now, after responding to a specific question, the witness is going to remember his response just as if it contained facts he thought of on his own.

Wells adds, "The best way to question a witness when looking for more information is to ask, 'What else can you tell me?' or, 'Does anything else stand out about this person?'"

Sometimes officers might need to interview witnesses years after a crime was committed. What happens to memories that are years old?

“Part of the complexity of memory is that there are different kinds of memory,” Wells says. “For instance, let’s suppose a witness was questioned an hour after witnessing something and then maybe again a few days later and maybe again a month later. After a year or two goes by, there probably hasn’t been a great deal of memory loss for things that a witness was already questioned about. You can think of those questionings as almost a type of rehearsal. If you mentally rehearse something, you can stave off the decay of memory. For things

a witness was not questioned about or had not thought of over that period of time, however, the chance he’s going to have reliable memory is very low.”

Facial composites

Just as the interview process can degrade memory, so can creating a facial composite of the suspect, says Wells, who is a consultant to both defense and prosecution counsel in state and federal criminal cases involving eyewitness memory, crime investigation procedures and evidence evaluation.

He describes two basic kinds of facial composites: free-hand sketches and composites pieced together one facial feature at a time with the

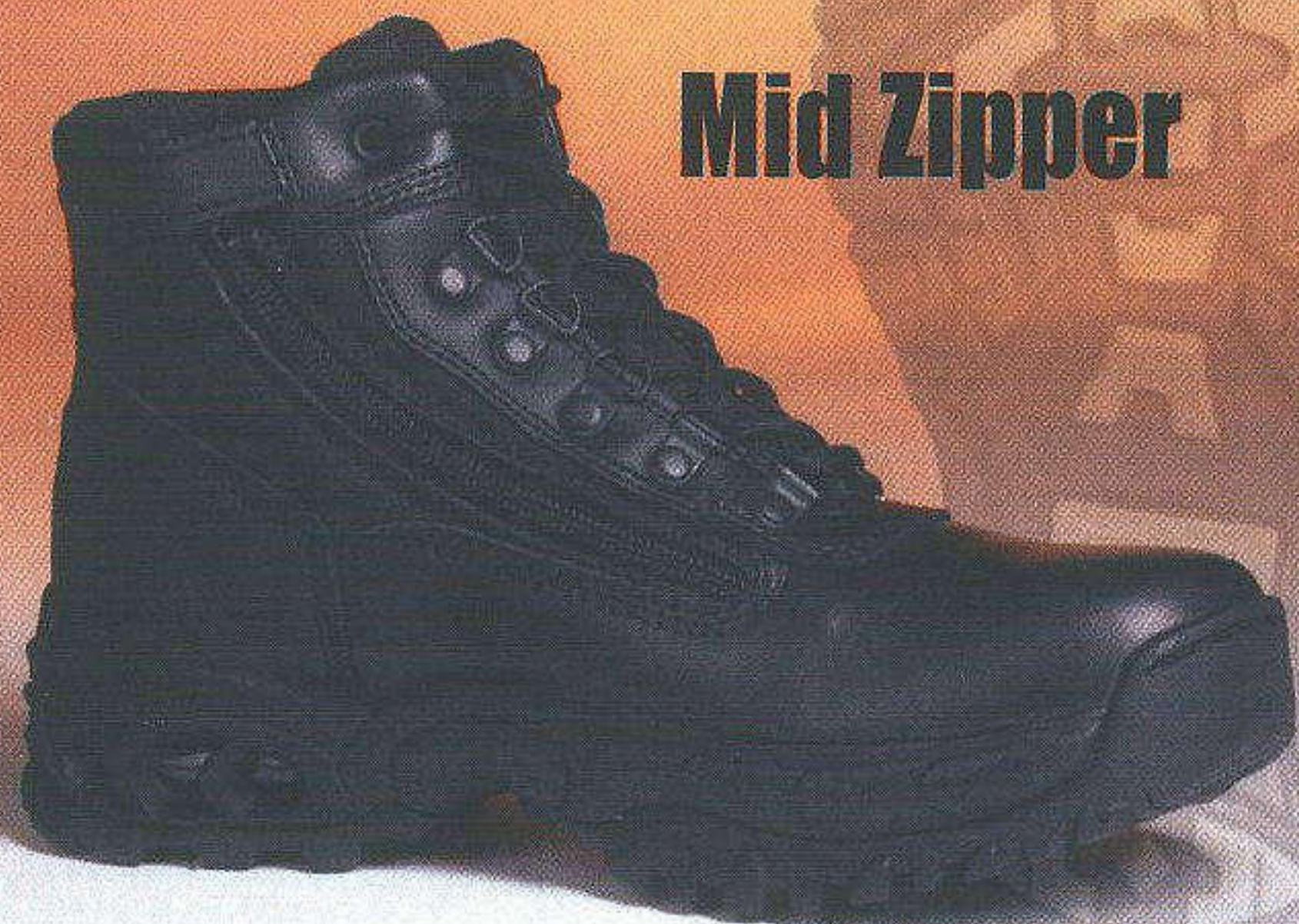
aid of photos in books, transparencies or a computer program.

“We know more about composites than we know about sketches,” Wells says. “I have to restrict what I conclude from the research to these composite systems. Basically, they produce rather poor likenesses of the perpetrator — not because they are technologically deficient, but because this is not how people remember faces. People don’t remember faces one feature at a time. They remember faces holistically.

“If we ask people to build a composite of someone they know very well, like their mother or father, they end up with very poor likenesses. One of the consequences of this, according to the latest research,

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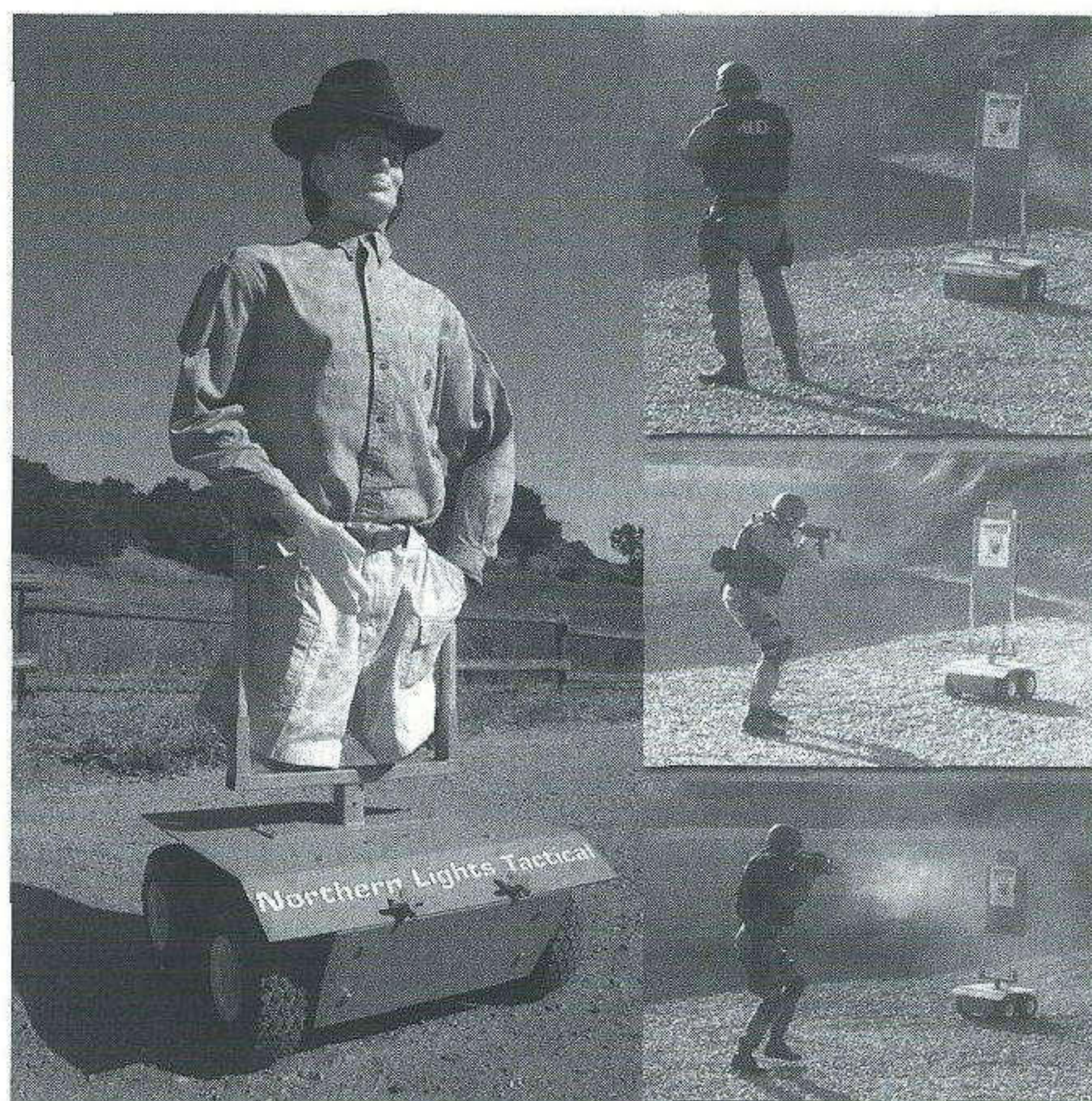
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is that when people do these composites, it turns out that, in part, because the composite is not a good likeness of the real person, it actually begins to change their memory. It harms their memory.

“For example, we’ve done experiments in which people are exposed to a face; some of them have to do a composite to try to build that face and others don’t. Then we show both groups a lineup that includes the face. Those that did the composite were less likely to be able to pick out the face they originally saw.”

Composites are prevalent in many police investigations because they are simple to do using computer programs, and can satisfy the need of the victim, witness or media for the police to demonstrate something is being done on a case, Wells says.

Sgt. Paul Carroll, who retired from the Chicago (Illinois) Police Department after 32 years, says they also can create media attention or let a neighborhood know there’s a rapist out there, for example.

Wells suggests composites should be a last resort. “If you’re going to do them, you need to realize that the suspect probably doesn’t look very much like the composite,” he says. “You have to realize that a composite could actually make the witness less likely to be able to pick the real perpetrator out of a lineup.”

Composites also can produce a lot of leads, he adds.

These leads aren’t typically good leads, Carroll says. “The problem I see — and we do it unintentionally — is if an officer recognizes the face in the composite and tells the detective, instead of looking for a

suspect, the focus is now on proving it’s someone who looks like the composite. If you don’t charge the person that the officer identified, there can be a lot of animosity and internal pressure.”

Wells concludes there are real problems with composites. “I’m not yet ready to say that we should ban their use, but they may be causing more damage than good,” he says. “My comments are restricted to the programs we have done research on. We don’t know if a sketch artist would produce the same results.”

Lineups

Criminal investigation is most impacted by eyewitness memory during lineups.

The National Institute of Justice (NIJ) “Eyewitness Evidence: A Guide for Law Enforcement” offers valuable suggestions for conducting lineups.

Wells was on the National Guidelines for Eyewitness Evidence Panel and points out that the guide describes sequential lineups but does not say they are preferred. He thinks it should. So does Carroll, who was also on the panel and has been doing consulting and training on sequential lineups since he retired from the Chicago PD in 1998.

“If you do a simultaneous lineup (all photos shown at the same time), the victim picks the best of the people that are there because they believe their job is to make an identification,” says Carroll. “Basically what they are doing is deciding who couldn’t be the perpetrator, instead of who the perpetrator is. If you have them look at a sequential lineup, they have to pick who the

perpetrator is, not who it isn’t.”

When traveling across the country, he says the main comment he hears from police departments switching to sequential lineups is that they get less picks but are happy with the picks they are receiving.

Carroll and Wells stress the importance of double-blind administration of lineups, but the guide does not. A double-blind lineup is when the person who administers the lineup does not know which person in the lineup is the suspect and which are merely fillers.

Wells says that double-blind administration of lineups is the most important single reform that can be made to increase the integrity of eyewitness evidence. The person administering the lineups does not need to have a badge, he says, but that person should be someone who is capable of giving testimony at trial. Smaller agencies or small towns where everyone may know who the suspect is can call in someone from a neighboring town to administer the lineup.

Avoiding inadvertent interference with double-blind lineups is really important, Carroll adds.

“I don’t think we mean to do it, but when they pick the right person, you can’t help getting a smile on your face,” he says.

If a witness makes an identification during a lineup, Wells says a recording should be made of the witness’ certainty at that point in time. Writing a report after a lineup and saying that the witness indicated No. 3, for example, is not good enough, he says. “It’s not misidentification that leads to wrongful convictions per se; it’s misidentification by an eyewitness who is positive he is

right," he says. "What we've discovered is the only meaningful time to find out about the certainty of the witness is at the time he makes that identification because later what happens is their certainty inflates, they become sort of convinced."

A suggestion found in the guide is offering clear instruction to the witness prior to viewing the lineup that the actual person who committed the offense might not be present in the lineup.

"When you call someone in to

look at a lineup or you go to their house to do photo spreads, they assume you know who committed the crime already and their job is to pick the same person," Carroll says.

NIJ guidelines recommend in addition to saying the offender might not be in the lineup, there should be added explanation that the police department will continue to investigate the case whether or not the witness chooses someone from the lineup, he says.

Another suggestion is careful selection of filler photos so the suspect who may or may not be the perpetrator does not stand out.

Wells emphasizes there is a responsibility to do lineups right.

"We can't control that there was fear in the witness that might have harmed the original memory," he says. "We can't control the fact that the perpetrator got in and out of the store very quickly so you only had a 12-second view. We have no way of controlling those things. What we can control and have an obligation to control is providing the safest and best eyewitness identification procedures we can develop."

Mistaken eyewitness identifications played a role in the vast majority of the post-conviction DNA exonerations in the United States, according to the Innocence Project at the Cardozo School of Law (www.innocenceproject.org/causes/mistakenid.php).

"Eyewitness identification is a weak link in evidence," Wells says. "It is the type of evidence that is both persuasive and not as highly reliable as people think. It is the primary cause of the conviction



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of innocent people. That's why we focus on lineups to look for ways to reduce the likelihood that an innocent person will be misidentified from the lineup."

Robberies, drive-by shootings and other crimes don't typically have DNA evidence. "We know there are mistaken identifications mixed in with those," Wells says. "We don't know how many and there's not much we can do about it after the mistaken identification has already occurred. Because we can't separate the good identifications from the bad identifications after the fact, we're trying to prevent the bad identifications from happening in the first place."

Since the guide was published in 1999, change is being seen. New Jersey has been doing sequential lineups for almost four years. Other states with sequential lineups include Minnesota, North Carolina, Virginia and Wisconsin.

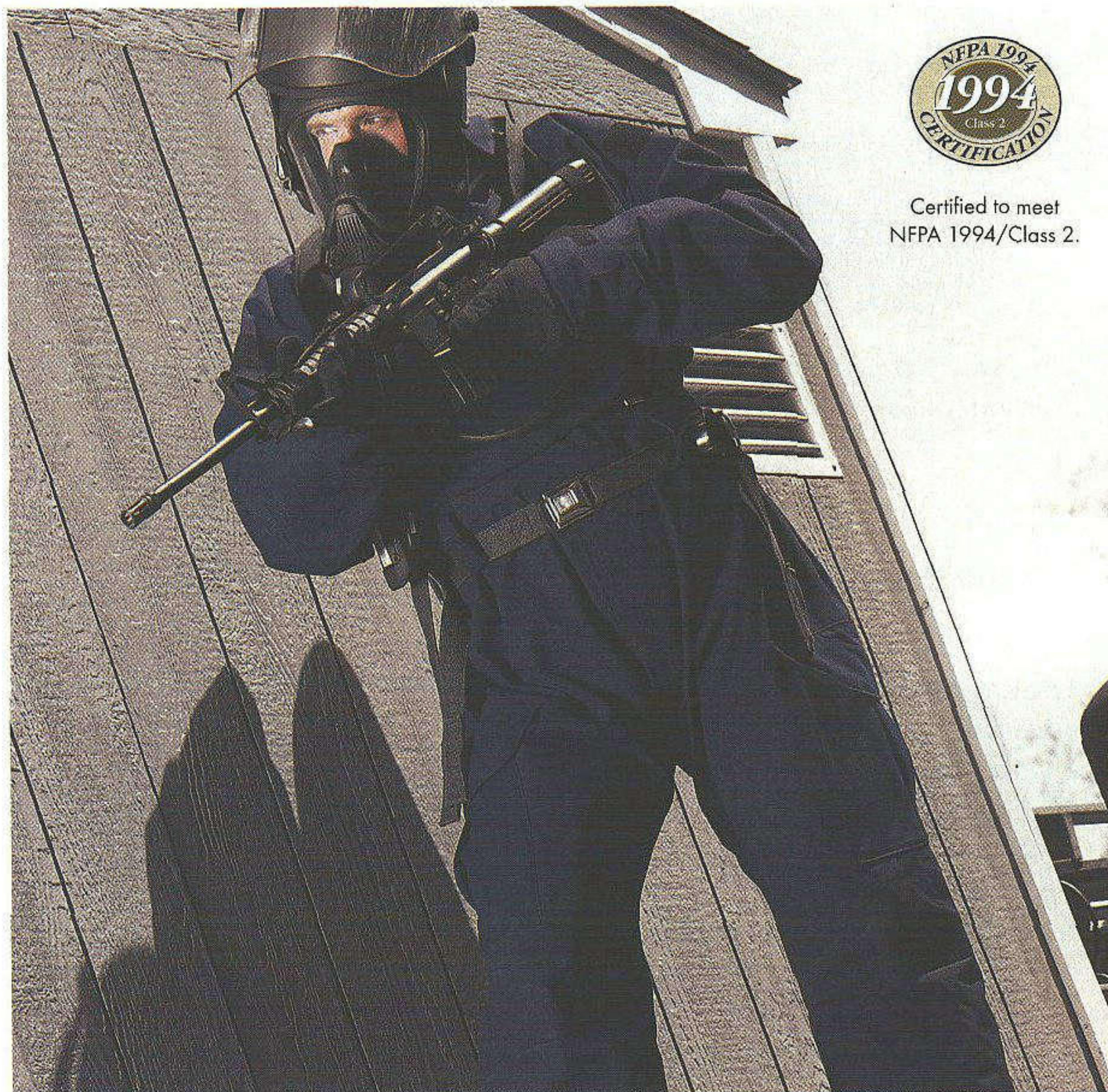
"I think five years from now these will be standard procedures across the country," Wells predicts. "Right now it's just sort of one jurisdiction or state at a time; I'm hoping that we'll get more of a domino effect."

The best way for change to be implemented is for agencies to step forward, he says. If they don't step forward on their own, change could be forced by the legislature.

"I don't like that," he says. "I think this is a law enforcement issue. I think the best way for change to happen is for law enforcement to look at what they have for procedures and look at other ideas that are scientifically based and combined with best practices. They can talk to

jurisdictions that have implemented change. I think law enforcement is receptive to this. It's just that they've got a lot of things on their plate and this has not yet risen to a top priority in a lot of jurisdictions." ■

Rebecca Kanable is a freelance writer living in Wisconsin. A former associate editor with "Law Enforcement Technology," she has been writing about law enforcement issues for seven years. She can be reached at kanable@charter.net.



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