KENSINGTON POLICE DEPARTMENT

TRAINING BULLETIN

EYEWITNESS IDENTIFICATION & INVESTIGATIVE LEADS

TARGET AUDIENCE	LEGAL JURISDICTION
Patrol Officers, Detectives, Supervisors	California — PC 859.7 & CA Case Law

HOW TO USE THIS MODULE

This training module covers every phase of the eyewitness identification process: from the moment a witness first reports seeing a suspect, through field show-ups, formal photo lineups, and the generation of investigative leads. The legal standards are based on California Penal Code § 859.7 and controlling California case law. Failure to follow these protocols can result in suppressed identifications, adverse jury instructions, or the wrongful prosecution of an innocent person.

Identification Procedure Decision Flowchart

Use this flowchart before beginning any identification procedure to determine the correct protocol.

START: Witness needs to view a suspect

▼

Do you have an identified suspect with a known photo?

▼

YES → Proceed to Formal Photo Lineup (Section III) | NO → Use Photo Collection / Yearbook Protocol (Section V)

▼

Is another officer available to administer the lineup?

▼

YES → Blind Administration (Gold Standard) | NO → Blinded Administration / Folder Shuffle Method (Section III)

▼

Was an ID made?

▼

YES → Immediately obtain confidence statement, document all persons present, date/time, and results | NO → Document the non-ID. Investigation continues.

▼

VIDEO/AUDIO RECORD ENTIRE PROCEDURE — If not feasible, document why in writing

SECTION I — STATUTORY FOUNDATION: PC § 859.7

Every identification procedure conducted in California must comply with PC § 859.7 to be admissible. The full statutory text is reproduced below. Officers must be familiar with every subsection.

Full Text of PC § 859.7(a)

(a) On or before January 1, 2020, each local law enforcement agency shall adopt, disseminate, and as appropriate, implement written policies and procedures regarding eyewitness identification that shall be designed to result in reliable and accurate identifications and that shall be consistent with the following requirements:

Subsection	Requirement
§ 859.7(a)(1)	Prior to conducting a photo lineup or live lineup, the investigator shall provide the following admonition to the eyewitness: (A) The perpetrator may or may not be among the persons in the identification procedure. (B) The eyewitness should not feel compelled to make an identification. (C) An identification or failure to make an identification will not end the investigation.
§ 859.7(a)(2)	A photo lineup or live lineup shall be conducted using blind administration or blinded administration.
§ 859.7(a)(3)	The investigator shall state in writing the reason that a blind or blinded administration was not used if that type was not used.
§ 859.7(a)(4)	An investigator shall not say anything to the eyewitness that may influence the eyewitness' selection.
§ 859.7(a)(5)	Fillers shall be selected so that the suspect does not stand out. All fillers shall resemble the eyewitness' description of the perpetrator in significant physical characteristics including age, skin color, and hair length.
§ 859.7(a)(6)	Only one suspect shall be included in any photo lineup or live lineup.
§ 859.7(a)(7)	At least five fillers shall be included in a photo lineup; at least four fillers in a live lineup.
§ 859.7(a)(8)	An investigator shall not say anything that may influence the eyewitness' confidence in the identification or lack of identification.
§ 859.7(a)(9)	If an identification is made, the investigator shall immediately seek to elicit a confidence statement in the eyewitness' own words, before the eyewitness is given

Subsection	Requirement
	any feedback.
§ 859.7(a)(10)	If an identification is made, the investigator shall document in writing: (A) All persons present; (B) Date and time; (C) Results of the procedure; (D) The confidence statement.
§ 859.7(a)(11)	A video and audio recording shall be made of the entire identification procedure. If not feasible, document why and make an audio recording. If audio is also not feasible, document why.

⚠️ KEY LEGAL TAKEAWAYS — READ BEFORE EVERY LINEUP

- "SHALL" means mandatory. These are legal requirements, not suggestions. Violations can suppress your identification entirely.
- Confidence must be captured BEFORE any feedback. Even "good job" or "thank you" constitutes feedback and will be used against you in court.
- Recording "not feasible" is a high bar. Body-worn cameras satisfy the recording requirement. Lack of equipment is rarely an acceptable excuse.
- Sequential photo viewing (one photo at a time) is best practice under DA guidance — it prevents witnesses from comparing photos to each other.
- Cross-reference: If you do not use blind/blinded administration, you must document why in writing (§ 859.7(a)(3)).

SECTION II — FIELD IDENTIFICATIONS (SHOW-UPS)

A show-up occurs when a witness is shown a single suspect in the field, typically within minutes of a crime. While inherently suggestive, they are legally permitted under specific conditions and remain a valuable tool for rapid suspect clearance when used correctly.

1. Legal Basis for Show-Ups

Courts permit show-ups when they occur close in time and proximity to the crime because a witness's memory is freshest immediately after an event. The competing interest — releasing innocent persons as quickly as possible — also weighs in favor of permitting this limited procedure. However, courts will scrutinize show-ups carefully. The further in time or location from the crime, the weaker the justification.

California authority: People v. Ochoa (1998); People v. Floyd (1970). If you have time to conduct a formal six-pack lineup (e.g., the suspect is identified hours later), a show-up will likely be suppressed. See People v. Carlos M. (1990).

2. Minimizing Suggestiveness — Best Practices

1. Transport the witness to the suspect's location, not the other way around. Bringing a suspect to a witness in a patrol car implies the person is already under arrest.
2. Remove custody indicators when safe to do so. Have the suspect stand outside the vehicle and remove handcuffs before the witness views them. If the suspect must remain restrained for safety, document this and explain it in your report.
3. Separate all witnesses immediately. If multiple witnesses are present, they must not speak to one another about the incident or the suspect. Conduct separate, independent show-ups for each witness. Never disclose whether a prior witness made an ID.
4. Deliver the admonition every time — even in the field:

> ***"The person you are about to see may or may not be the person who committed the crime. You should not feel compelled to make an identification. An identification or failure to make an identification will not end the investigation."***

5. Capture the confidence statement immediately after the witness responds. Before any comment from you, ask: 'In your own words, how certain are you?' Record the exact words used.
6. Record with your BWC. Announce on camera: 'I am beginning an identification procedure.' Angle the camera to capture both the witness's face and the suspect or photo being shown.

FIELD REMINDERS — SHOW-UPS

- Always give the admonition — even if you're in a hurry.

- Remove handcuffs if safe; document why you could not if you couldn't.
- Never tell Witness B what Witness A said. Conduct all show-ups independently.
- Your BWC is your recording device. Activate it before the show-up begins.
- A show-up is for fresh identifications only. When in doubt, do a formal lineup instead.

SECTION III — BLIND vs. BLINDED ADMINISTRATION

PC § 859.7(a)(2) requires either blind or blinded administration for every photo or live lineup. Understanding the difference — and being able to execute the Folder Shuffle Method alone in the field — is a core competency for every officer.

1. Blind Administration — The Gold Standard

In blind administration, the officer conducting the lineup has no knowledge of which person is the suspect. This completely eliminates the risk of unintentional cues being transmitted to the witness.

1	**Investigator prepares**	Officer A (the case investigator) prepares the six-pack: one suspect photo and five filler photos.
2	**Hand off to neutral officer**	Officer A gives the sealed, shuffled lineup to Officer B — a patrol officer or other neutral party with no knowledge of who the suspect is.
3	**Officer B administers**	Officer B shows each photo to the witness sequentially (one at a time). Officer B has no ability to influence the selection because they do not know which photo is the suspect.
4	**Results returned**	Officer B documents the witness response for each photo and returns the sealed results to Officer A.

2. Blinded Administration — The Folder Shuffle Method (Solo Officer)

When a second officer is unavailable, the Folder Shuffle Method allows you — even though you know who the suspect is — to administer the lineup without knowing which folder the witness is viewing at any given moment.

1	**Prepare photos**	Place each of the six photos (1 suspect + 5 fillers) into its own individual manila folder. Label the outside of each folder with a number only.
2	**Add dummy folders**	Add four additional folders containing blank paper. This prevents the witness from knowing when they have reached the last photo.
3	**Shuffle**	Shuffle all 10 folders until you no longer know which folder contains the suspect. Number the outside of the folders 1 through 10 (do not re-number if they get out of order — that's the point).
4	**Administer sequentially**	Hand each folder to the witness one at a time. Turn slightly away so you cannot see the photo. Do not look at the photo as the witness views it.
5	**Document each response**	For each folder, record the witness's response: 'Yes,' 'No,' or 'Unsure.' Use their exact words. Do not prompt.

6	**Confidence statement**	Immediately after any 'Yes' or positive response, ask: 'In your own words, how certain are you?' Record verbatim before saying anything else.
7	**Record everything**	Your BWC should be running from step one. Announce at the start: 'I am beginning a blinded photo identification procedure using the folder shuffle method.'

3. Digital Lineup Software

Agencies using tablet-based lineup software (such as PROLINEUP or similar platforms) may satisfy the blinded administration requirement automatically, because the software randomizes photo order and the officer does not control sequencing. If KPD adopts such a platform, this satisfies § 859.7(a)(2) without the folder shuffle. Document the software name and version in your report.

FIELD REMINDERS — LINEUP ADMINISTRATION

- Solo? Use the Folder Shuffle. It works. Practice it before you need it.
- Partner available? Give them the lineup and step out. Do not brief them on who the suspect is.
- BWC on before you start. Announce what you are doing on camera.
- Sequential viewing only — one folder at a time, never spread out on a table.
- If the witness says 'I think that's him' or 'Maybe,' capture that exact language. Do NOT push for certainty — that's feedback and will undermine the ID in court.

SECTION IV — FILLER SELECTION & LINEUP COMPOSITION

A lineup is only as strong as its fillers. Courts and defense attorneys scrutinize lineups for anything that makes the suspect stand out. A six-pack where only one person matches the witness's description is functionally a show-up — and will be treated as one.

Legal Minimum Requirements (§ 859.7(a)(5)-(7))

- One suspect per lineup only.
- At least five fillers for a photo lineup; at least four for a live lineup.
- Fillers must resemble the witness's description of the perpetrator in significant physical characteristics, including age, skin color, and hair length.

Practical Filler Standards

Standard	Application
Match the description, not the suspect	Base filler selection on what the WITNESS described, not on what the suspect actually looks like. If the witness described a 'heavyset Latino male in his 30s,' all fillers should fit that description even if the suspect is actually thinner.
Yearbook extraction rule	Never cut a suspect photo directly from a yearbook and use the remaining students as fillers. Scan the suspect's photo and format it into a uniform digital template, then select five other individuals from other sources to eliminate any formatting or image quality differences.
Document filler sources	Note in your report where each filler photo came from (e.g., DMV database, previous arrest records). This demonstrates that you did not cherry-pick from a single source.
Unique descriptor matching	If the witness described a specific feature — 'bowl cut,' 'neck tattoo,' 'red hoodie' — all fillers should share that feature, or the procedure is suggestive.
Limit photo variation	All six photos should be similar in quality, size, lighting, and format. A single high-resolution suspect photo surrounded by grainy DMV shots creates an inherently suggestive lineup.

SECTION V — JOHN DOE INVESTIGATIONS (NO IDENTIFIED SUSPECT)

When you have a witness but no named suspect, the goal is to generate an identity without tainting the witness's memory. The single biggest mistake in these cases is using the primary crime scene witness to search for the suspect — which effectively converts your strongest evidentiary witness into a lead-generation tool, weakening their subsequent lineup identification in court.

1. The Two-Witness Protocol

Whenever possible, separate the 'lead generation' function from the 'formal identification' function across two different people:

- Lead Generator: Use a person who was NOT a primary crime scene witness (e.g., a teacher, neighbor, SRO, or probation officer who knows the area) to review surveillance footage, yearbooks, or mug books to generate a name.
- Formal Identifier: Once you have a name and photo, use the primary crime scene witness for a formal, blind-administered six-pack lineup.

Why this matters: The primary witness's identification is then based purely on their memory of the crime, not their memory of having seen surveillance video or a photo collection. This is the cleanest possible chain of identification evidence.

2. Photo Collections & Yearbooks (People v. Rodriguez, 1970)

When you have no suspect at all, showing a witness a large photo collection (a yearbook, a digital gallery, or a mug book) is legally permissible as a lead-generation technique. This is not a 'lineup' — it is a 'photo collection,' and different rules apply.

7. Do not point to or highlight any specific person in the collection.
8. Let the witness scroll or flip through pages independently at their own pace.
9. Document exactly how many photos were viewed and how long the review took.
10. If the witness selects someone, record their exact words and confidence level immediately.
11. Once a name is generated from a photo collection, STOP the collection search. Transition to a formal six-pack lineup per Section III.

⚠ CRITICAL: The Transition Rule

Once you have a named suspect from any source, you MUST stop the photo collection search.

Continuing to show the witness more photos after a name has been generated is improper and may suggest to the court that you were trying to 'confirm' the selection.

Document exactly what photo or image caused the witness to stop and make a selection.

3. Cold-Search Surveillance Review

If a witness states 'I'll know them when I see them,' you may allow them to view surveillance footage of the crime to identify suspects. This is a legitimate investigative technique with significant risks you must manage:

- Document that the witness is identifying the person in the video as the person they saw at the crime scene — not simply that they recognize the person from the video.
- Risk of taint: Once a witness uses surveillance to generate the suspect's identity, any subsequent lineup with that same witness is significantly weakened because they have now seen the suspect in a suggestive context (committing the crime on camera).
- Best practice: Use a third party (teacher, parent, neighbor, probation officer) to identify the person in the video first. Keep your crime scene witness 'clean' for a formal six-pack.

SECTION VI — TAINT PREVENTION & WITNESS CONTAMINATION

Witness contamination — also called 'taint' — occurs when a witness's memory of the suspect is influenced by exposure to photos, news coverage, or other witnesses before a formal identification procedure. It is one of the most common and preventable causes of ID suppression.

1. The Single-Photo Taint (People v. Sanchez, 2019)

Showing a witness a single photo or surveillance still of a suspect before a formal lineup is 'inherently suggestive.' The defense will argue the witness's subsequent lineup ID is based on memory of the photo, not memory of the crime.

- Use single photos and surveillance stills ONLY for generating investigative leads (BOLOs, public appeals, officer broadcasts).
- Once you have a witness who will need to testify, move to a neutral six-pack lineup. Never shortcut this by showing the testifying witness a single photo first.
- If a witness accidentally sees a BOLO or news broadcast featuring the suspect, document this immediately. Courts apply the Biggers reliability test to determine if the witness's memory is independently reliable despite the exposure (see Section VIII).

2. BOLO & Media Exposure Protocol

12. If a BOLO is broadcast (to officers or the public) while an active case witness has not yet been interviewed, note in your report that the witness's identification procedure was conducted before any BOLO exposure — or document that exposure occurred and when.
13. If Witness A makes an ID before Witness B has been shown the lineup, do not tell Witness B that Witness A identified the suspect. Independent IDs are far stronger in court.
14. If a witness informs you they saw the suspect on the news, stop. Document the statement. Consult with your DA before proceeding. Do not administer the lineup until you know your evidentiary theory.

3. Multiple-Witness Separation Protocol

- Separate witnesses from each other immediately upon arrival at a scene or at the station.
- Conduct all identification procedures independently — one witness at a time, in separate rooms or vehicles.
- Never let witnesses hear another witness's reaction to a lineup ('She picked the third guy!').
- Document in your report that witnesses were separated and that no witness was informed of another's identification result.

SECTION VII — SURVEILLANCE VIDEO & BOLOs

1. Generating Leads from Surveillance

Releasing surveillance stills to the public, broadcasting a BOLO to officers, or having a lay witness (teacher, family member, PO) identify a suspect on video are all legitimate investigative lead-generation techniques. These activities do not constitute a 'witness identification' under PC § 859.7 and do not require blind administration.

Lay Recognition (People v. Ingle): A person who knows the suspect may testify that the person in the video is the defendant. This is recognition testimony, not eyewitness identification. It requires foundation (how well they know the person and for how long) but is not governed by § 859.7.

2. Body-Worn Camera as Recording Device

Your BWC satisfies the § 859.7(a)(11) recording requirement for any identification procedure. Practical protocol:

15. Activate your BWC before the witness arrives or before beginning any procedure.
16. Announce on camera: 'I am beginning an identification procedure on [date, time, location]. The witness present is [witness identifier]. I am using [blind/blinded/folder shuffle] administration.'
17. Angle the camera to capture both the witness's face/reactions and the photos or suspect being shown.
18. At the conclusion, state: 'The identification procedure is now complete.' Capture any confidence statement while the camera is still running.

If your BWC battery is dead or storage is full, document this in writing and make a contemporaneous audio recording on your cell phone or radio. 'I didn't have a BWC' is not a sufficient explanation without more.

SECTION VIII — CONTROLLING CASE LAW

Case	Rule & Application
Neil v. Biggers (1972) U.S. Supreme Court	The Reliability Test. Even if a procedure is suggestive, an ID may survive if it is independently reliable. Courts assess: (1) opportunity to view the suspect at the time of crime; (2) the witness's degree of attention; (3) accuracy of the prior description; (4) the witness's confidence level at the time of the ID; and (5) the time elapsed between crime and ID.
People v. Rodriguez (1970)	Photo Collections vs. Lineups. Yearbooks and mug books are legal 'photo collections' when no suspect is identified. Once a suspect emerges, the collection stops and a formal lineup begins.
People v. Sanchez (2019)	The Single-Photo Rule. Showing a testifying witness a single photo or surveillance still is inherently suggestive. Use single photos for lead generation only. Testifying witnesses go to six-packs.
People v. Carlos M. (1990)	Show-Up Limitations. Field show-ups are preliminary investigative tools. When time and circumstances permit a formal lineup, a show-up is improper and likely to be suppressed.
People v. Ochoa (1998)	Show-Up Totality Test. Courts evaluate show-ups under a totality of circumstances. Suggestiveness alone does not require suppression if the identification is otherwise reliable under Biggers.
People v. Floyd (1970)	Early California standard establishing that field identifications, while suggestive, are permissible when the witness's opportunity to observe was substantial and conditions at the time of ID were not unduly coercive.
People v. Ingle	Lay Recognition. Persons familiar with a suspect may provide recognition testimony from video or surveillance footage as opinion testimony. This is distinct from an eyewitness identification and is not governed by § 859.7.

SECTION IX — HANDLING HEDGED & UNCERTAIN IDENTIFICATIONS

One of the most common situations you will face is a witness who does not give a clear 'yes' or 'no.' Hedged responses — 'I think that's him,' 'Maybe Number 3,' 'I'm not sure, but...' — are extremely common and require careful handling. Getting this wrong often creates more problems than it solves.

The Core Rule: Document, Don't Push

Your job after a witness responds is documentation, not persuasion. Any attempt to push a witness toward a firmer ID constitutes influence under § 859.7(a)(8) and will be used to attack the identification in court.

Situation	Proper Response
Witness says:	'I think that's Number 4.'
You say:	"Can you tell me in your own words how certain you are?" [Record verbatim response. Stop.]
Do NOT say:	"Are you sure? Take your time. Look again."
Witness says:	Maybe him, but I am not positive.
You say:	I am going to record your response as you described it. Is there anything else you want me to know about your level of certainty?
Do NOT say:	A lot of people are a little nervous - it is okay, take another look.

Document the exact words used. In your supplemental report, note the witness's demeanor and any qualifying language. A hedged identification does not necessarily end the investigation — it becomes part of the totality the court will evaluate under Neil v. Biggers. A hesitant but ultimately corroborated identification can survive suppression. A pushed identification that later appears manufactured will not.

SECTION X — FIELD CHECKLIST

Use this checklist before, during, and after every identification procedure. A physical printed copy should be kept in each patrol vehicle.

Before the Procedure

- ☐ Obtain a detailed written description of the suspect from the witness BEFORE showing any photos or video.
- ☐ Determine: Do you have an identified suspect? If yes → Six-pack. If no → Photo collection per Section V.
- ☐ Select fillers that match the witness's description, not the suspect's actual appearance.
- ☐ Ensure all photos are uniform in quality, size, and format.
- ☐ Arrange for a second officer (blind administration) or prepare the Folder Shuffle (blinded administration).
- ☐ Activate your BWC before the witness enters the room or the procedure begins.

During the Procedure

- ☐ Announce the procedure on your BWC: type of administration, date, time, persons present.
- ☐ Read the three-part admonition verbatim. Do not paraphrase.
- ☐ Show photos sequentially — one at a time. Do not allow the witness to see multiple photos simultaneously.
- ☐ Do not react to any response — positive, negative, or uncertain. Maintain a neutral expression and tone.
- ☐ Record the witness's response to each photo using their exact words.
- ☐ If a positive ID is made: immediately ask for the confidence statement before saying anything else.

After the Procedure

- ☐ Document in writing: all persons present, date, time, results, and verbatim confidence statement.
- ☐ If administration was not blind or blinded, document the specific reason in writing.
- ☐ Note any pre-procedure exposure to BOLOs, media, or other witnesses.
- ☐ Note the 'independent source' of the witness's knowledge (e.g., 'Witness observed suspect for 45 seconds under overhead lighting at a distance of approximately 8 feet').
- ☐ Preserve BWC recording as evidence. Flag the relevant segment in your report.
- ☐ If witness viewed a photo collection prior to the six-pack, document exact number of photos viewed and time elapsed.

SECTION XI — TRAINING SCENARIOS

The following scenarios present realistic field situations officers encounter during identification procedures. For each scenario, read the situation carefully, identify the challenges, then review the correct actions and common mistakes. Use these as discussion prompts for training sessions or self-directed study.

SCENARIO 1: THE HANDCUFFED SUSPECT SHOW-UP

THE SITUATION

At 1423 hours, you stop a subject matching a robbery suspect description two blocks from the scene, four minutes after the crime. You detain the subject in handcuffs pending further investigation. The victim is still at the scene and wants to see if 'that's the guy.' Your sergeant tells you to bring the victim over to your patrol car where the suspect is seated in the back cage.

CHALLENGES PRESENTED

1. The suspect is visibly handcuffed and seated in a patrol car cage — presenting maximum custody indicators.
2. Your sergeant is instructing you to use a procedure that is inherently more suggestive than necessary.
3. You have a strong time-and-proximity argument in your favor, but you could lose it by the manner of presentation.
4. You have not yet given the admonition to the victim.

✔ CORRECT ACTIONS

1. Politely advise your sergeant of the custody indicator concern and propose an alternative: have the suspect step out of the patrol car, and if safe, temporarily remove handcuffs before the victim views them.
2. Transport the victim TO the suspect's location (not vice versa), and position the suspect outside the vehicle if officer safety allows.
3. Deliver the full three-part admonition to the victim BEFORE they see the suspect.
4. Activate your BWC before beginning. Capture the admonition, the procedure, and the victim's response on camera.
5. Immediately after any identification response, ask: 'In your own words, how certain are you?' Record verbatim.
6. In your report, note why full removal of restraints was or was not possible and document any remaining custody indicators.

× COMMON MISTAKES

1. Bringing the suspect to the victim in the back of the patrol car without modification — this is maximally suggestive and may suppress the ID.
2. Proceeding without delivering the three-part admonition because 'there wasn't time.'
3. Telling the victim, 'We've got someone' before they view the suspect — this cues the witness that a 'correct answer' exists.
4. Failing to activate the BWC because you were in a hurry.
5. Asking the victim 'Is that him?' instead of asking them to describe their level of certainty in their own words.

⚖️ **LEGAL SIGNIFICANCE:** Under People v. Ochoa (1998) and People v. Floyd (1970),

the show-up's suggestiveness will be evaluated under a totality of circumstances. Handcuffs and a cage are powerful custody indicators. Courts have suppressed show-up IDs where the suspect was 'obviously' in custody. Your report's documentation of why restraints were maintained and what steps you took to reduce suggestiveness will be critical.

? FACILITATOR DISCUSSION PROMPTS

1. Your sergeant gave you a direct instruction. How do you balance following that order with your legal obligation to conduct a legally defensible identification procedure?
2. If you cannot safely remove the handcuffs, what specific language would you include in your report to justify that decision? What facts would a judge need to see?
3. The victim is emotionally distressed and wants to 'just tell you if that's him.' What do you say to them before beginning — and why does the admonition still matter even when the witness feels certain?
4. Walk through the exact words you would use to give the admonition in this scenario. Now give it again as if the victim is resistant and says 'I know, I know, can we just do this?'
5. If the victim makes a qualified ID ('I'm pretty sure that's him'), what do you say next? What do you NOT say?
6. How would this scenario change if 90 minutes had passed since the crime instead of four minutes?

SCENARIO 2: TWO WITNESSES, ONE SUSPECT — KEEPING THEM SEPARATE

THE SITUATION

A residential burglary has two witnesses: the homeowner (Witness A) who saw the suspect's face for several seconds from 15 feet away, and a neighbor (Witness B) who saw the suspect fleeing and can describe his clothing. You have a suspect in custody. You are preparing a six-pack lineup at the station. Both witnesses arrive at the same time and begin talking in the lobby.

CHALLENGES PRESENTED

1. Witnesses are actively conversing — potential contamination before the procedure begins.
2. You do not know yet if either has said anything about the suspect's appearance to the other.
3. Witness A (better view of face) should be your primary identification witness; Witness B may be stronger for corroborating clothing description.
4. You are conducting a formal lineup at the station, not a field show-up — higher procedural standards apply.

✓ CORRECT ACTIONS

1. Separate the witnesses immediately. Assign a second officer to take Witness B to a different room before additional information is exchanged.
2. Ask both witnesses (separately) whether they discussed the suspect's appearance with each other. Document their answers

× COMMON MISTAKES

1. Allowing witnesses to continue talking while you prepare the lineup.
2. Telling Witness B 'Witness A already identified Number 3 — just take a look' — this completely destroys the independent ID value of Witness B.
3. Conducting both lineups in the same

in your report.
3. Administer blind or blinded lineups to each witness separately, with one witness fully finished and out of contact before the other begins.
4. Do not tell Witness B whether Witness A made an identification. Conduct fully independent procedures.
5. Document in your report: when they arrived, what (if anything) was overheard of their conversation, and that procedures were conducted independently.

room at the same time.
4. Failing to document whether witnesses had contact before the procedure.
5. Administering the lineup to Witness B with you present after already knowing Witness A's result — without using the folder shuffle to ensure you cannot inadvertently cue the result.

⚖️ **LEGAL SIGNIFICANCE:** Post-ID communication between witnesses is one of the most common grounds for ID suppression. If two witnesses independently identify the same photo, you have powerful corroboration. If they were allowed to talk first, the defense will argue both IDs derive from a single tainted source. Your documentation of separation is the evidence that independent corroboration is genuine.

? FACILITATOR DISCUSSION PROMPTS

1. You arrive at the station and find both witnesses already talking in the lobby. What is your first action, and what do you say to each of them?
2. You overhear Witness A say to Witness B: 'The guy was wearing a gray hoodie.' Does this rise to the level of contamination? How do you document it and does it change how you proceed?
3. Witness B asks you: 'Did the other woman pick anyone?' How do you respond? Role-play that conversation.
4. What would you say in your report to establish that the two identifications were independent of each other? What specific facts would you document?
5. If Witness A makes an identification and Witness B does not, how does that affect your investigation? How does it affect the case in court?
6. Your sergeant asks you to speed things up and do both witnesses at the same time in the same room. How do you handle that request?

SCENARIO 3: JOHN DOE ASSAULT — YEARBOOK & THE TAINT PROBLEM

THE SITUATION

A high school student is assaulted on campus. The victim (Witness A) says the attacker was 'a student she didn't know' but can describe him in detail: male, approximately 17, Black, tall, with a distinctive high-top fade haircut. No name is known. The SRO offers to show Witness A the school yearbook to identify the suspect.

CHALLENGES PRESENTED

1. No suspect is identified — you are in 'John Doe' mode requiring photo collection protocols.
2. If Witness A views the yearbook and identifies someone, she becomes 'tainted' for any subsequent formal lineup.

3. The SRO's offer is well-intentioned but could compromise your best identification witness.
4. You have a detailed physical description that can guide filler selection once a suspect is identified.

✓ CORRECT ACTIONS

1. Ask the SRO — who knows the students — to review the yearbook independently to generate a name, WITHOUT showing it to Witness A.
2. If no second identifier is available and the yearbook review is necessary with Witness A, follow Rodriguez protocols: don't point at anyone, let her flip pages independently, document total photos viewed and time elapsed.
3. Document Witness A's description of the suspect in detail BEFORE any photo or yearbook is shown.
4. Once a name is generated (by the SRO or by Witness A), immediately stop the collection search and prepare a formal six-pack with proper fillers matching Witness A's description.
5. Administer the formal six-pack using blind or blinded protocol (Section III).

× COMMON MISTAKES

1. Having the SRO point at potential suspects in the yearbook while Witness A watches.
2. Showing Witness A a single photo of the suspect generated from a yearbook scan — this is a show-up disguised as a lead tool.
3. Conducting the yearbook review with Witness A and then immediately conducting a formal six-pack — without documenting the collection review in detail.
4. Failing to capture Witness A's detailed description before the yearbook is shown (you lose your baseline for filler selection and for Biggers analysis).
5. Continuing the yearbook review after a name has been generated.

⚖️ **LEGAL SIGNIFICANCE:** Under People v. Rodriguez (1970), the yearbook review is a lawful photo collection. But if Witness A makes the ID from the yearbook, any subsequent six-pack is weakened because Witness A may be recognizing the yearbook photo rather than the person she saw assault her. The SRO as an independent identifier keeps Witness A's memory clean. Document the SRO's independent source of knowledge (how long they've known the student, in what context) for potential lay recognition testimony.

? FACILITATOR DISCUSSION PROMPTS

1. The SRO says 'I barely know most of these kids by face.' Does that change your assessment of using them as a lay identifier? What foundation does a lay identifier need to give reliable recognition testimony?
2. Witness A insists: 'I want to look through the yearbook myself — I know I can find him.' How do you manage her request while protecting the integrity of the eventual six-pack?
3. If you have no choice but to have Witness A conduct the yearbook review, walk through exactly how you would set it up and document it to comply with Rodriguez.
4. Witness A picks a photo from the yearbook and says 'That's him.' What happens next? What are the exact steps from that moment to a formal lineup?
5. Why does getting Witness A's detailed description of the suspect BEFORE the yearbook review matter so much for the Biggers analysis later?
6. The defense attorney later argues: 'Your witness only picked my client from the six-pack because she recognized him from the yearbook page she already saw.' What facts in your documentation rebut that argument?

SCENARIO 4: WITNESS SEES THE BOLO BEFORE THE LINEUP

THE SITUATION

You are preparing to administer a photo lineup to Witness A, a store clerk who witnessed a robbery. Before you can begin, Witness A tells you she saw the suspect's photo on the local news this morning, identified as a 'person of interest' in a separate incident. She says 'that's definitely the guy — I recognized him right away when they showed his picture.'

CHALLENGES PRESENTED

1. Witness A's memory of the suspect may now be based on the news photo rather than her direct observation of the crime.
2. The lineup you were about to conduct may be compromised before it begins.
3. You cannot 'un-ring the bell,' but how you handle this from here will determine whether the identification survives.
4. The Biggers reliability factors will be applied to determine whether her original observation was independently reliable.

✔ CORRECT ACTIONS

1. Stop. Do not proceed with the lineup until you consult with your DA or supervisor.
2. Document the witness's exact statement about what she saw and when: 'I saw his photo on Channel 7 news this morning before you called me.' Note the time.
3. Conduct a detailed pre-ID interview focused on her independent observation at the crime scene: How long did she see the suspect? Lighting conditions? Distance? Was she focused on the suspect? What was her description BEFORE seeing the news photo?
4. Document the Biggers factors in your report: opportunity to view, attention level, accuracy of prior description, her initial confidence, and the time between crime and exposure to the media photo.
5. Preserve the news broadcast if possible — know exactly what image was used.
6. When consulting the DA, present the Biggers analysis so they can assess whether the independent source argument is viable.

× COMMON MISTAKES

1. Proceeding with the lineup as planned without documenting the media exposure.
2. Telling Witness A 'That's okay, just take a look at these anyway' — this validates the exposure and implies the lineup will confirm what she already saw.
3. Failing to document her prior description of the suspect (which you should have obtained before this meeting — this is why pre-ID descriptions are critical).
4. Dismissing the case because the witness was 'contaminated' without first analyzing whether independent reliability exists.

⚖️ **LEGAL SIGNIFICANCE:** Under Neil v. Biggers (1972), an identification that follows suggestive circumstances can still be admissible if the witness's original observation was of sufficient quality to establish independent reliability. The key is documentation: detailed notes of her observation conditions at the crime scene versus the content of the news exposure allow the court to make an informed ruling. This scenario is recoverable with thorough documentation and early DA consultation — but only if you stop and do the analysis rather than proceeding blindly.

? FACILITATOR DISCUSSION PROMPTS

1. Witness A tells you about the news exposure right as you are about to start the lineup. Walk through your first three actions in order.
2. What specific questions would you ask Witness A about her observations at the crime scene to build the Biggers independent reliability argument?
3. Let's say Witness A told you she saw the suspect face-to-face for 45 seconds in bright fluorescent lighting from three feet away and gave a highly accurate description before the news broadcast. Does that change your analysis? Would you proceed with the lineup?
4. Now flip it: Witness A only glimpsed the suspect for two seconds in poor lighting and her prior description was vague. How does that change your recommendation to the DA?
5. If you proceed with the lineup after the news exposure, what specific language in your report documents the Biggers factors to give the DA the strongest possible foundation for the independent source argument?
6. What could you have done differently earlier in the investigation to prevent this situation?

SCENARIO 5: THE HEDGED IDENTIFICATION — 'I THINK THAT'S HIM'

THE SITUATION

You are administering a folder shuffle lineup to the victim of a carjacking. The victim has now viewed all ten folders. When she viewed Folder 6, she said 'I think that's him, but I'm not totally sure.' For all other folders she said 'No.' Folder 6 contains the suspect's photo. Your sergeant is in the hallway and texts you: 'Did she pick anyone? We need this to move forward.'

CHALLENGES PRESENTED

1. The victim gave a qualified identification — 'I think' and 'not totally sure' are hedging language that must be captured exactly.
2. Your sergeant's question creates pressure to firm up or inflate the ID.
3. You need a confidence statement before any further communication or confirmation.
4. The hedged language, properly documented, may still support probable cause and is not necessarily fatal to prosecution.

✓ CORRECT ACTIONS

1. Immediately after Folder 6, ask: 'In your own words, how certain are you about the person in that folder?' Record the verbatim response on your BWC.
2. If she says 'Maybe 60-40' or 'I'm pretty sure but not positive,' record those exact words. Do not push.
3. Conclude the procedure, secure the witness's written statement if possible, and deactivate the BWC.
4. Inform your sergeant: 'The witness made a qualified identification with stated uncertainty — I have it on camera and documented. DA may want to review before we proceed.'

× COMMON MISTAKES

1. Going back into the room and saying 'Take your time — look at Folder 6 again. Are you sure?' This is influence under § 859.7(a)(8).

5. In your report, describe the entire procedure and quote the witness's exact words for each photo response, not a summary.
6. Note the Biggers factors: her observation conditions, attention, and pre-lineup description.

⚖️ **LEGAL SIGNIFICANCE:** Telling your sergeant 'She made a positive ID' when she said 'I think that's him, but I'm not totally sure.' — overstating the ID inflates probable cause and sets up a suppression problem when the actual recording is discovered in discovery.

? FACILITATOR DISCUSSION PROMPTS

1. Showing her the suspect's photo outside the folder at the conclusion to 'confirm' — this converts a qualified ID into a single-photo presentation.

SCENARIO 6: SOLO OFFICER, NO PARTNER AVAILABLE, URGENT LINEUP NEEDED

THE SITUATION

You are working a solo patrol shift. A robbery victim is available at the station and is emotionally distressed, wanting to view a lineup as soon as possible. No other officers are available for at least 90 minutes. Your sergeant says to proceed. You have the six photos ready. You know which photo is the suspect.

CHALLENGES PRESENTED

1. Blind administration is not possible without a second officer — you must use the blinded (folder shuffle) method.
2. You know which photo is the suspect, making you the administrator — the highest-risk scenario for inadvertent influence.
3. The victim is emotionally distressed — document her state and ensure the procedure is done carefully.
4. Your BWC is your most important protection in this scenario.

✓ CORRECT ACTIONS

1. Conduct the Folder Shuffle Method per Section III: six photos in individual folders, four additional dummy folders, shuffled until you do not know which folder contains the suspect.
2. Activate your BWC and announce: 'I am beginning a blinded identification procedure using the folder shuffle method. I am the sole officer present. The date is [date], time is [time].'
3. Deliver the full three-part admonition on camera.
4. Turn slightly away from the witness as they view each folder. Do not look at the photo.

× COMMON MISTAKES

1. Showing the photos to the victim by simply handing her a stack to look through — this is neither blind nor blinded and violates § 859.7(a)(2).
2. Waiting 90 minutes but allowing the victim to sit unsupervised with access to news, social media, or other potential sources of contamination.
3. Conducting the procedure without your BWC because 'you're the only one there and will just write it up.'
4. Failing to document why blind administration was not used — this is a statutory requirement (§ 859.7(a)(3)).

5. Record each folder response verbatim. After any positive response, capture the confidence statement immediately.
6. Document in your supplemental report why blind administration was not available and why you could not wait.

⚖️ **LEGAL SIGNIFICANCE:** A properly executed folder shuffle by a solo officer is legally sufficient under PC § 859.7. The statute's requirement under (a)(3) — documenting why fully blind administration was not used — creates a paper trail that validates, rather than undermines, the procedure. The folder shuffle exists precisely for this scenario. An officer who improvises an informal photo presentation instead will face much harder suppression scrutiny than one who used the folder shuffle and documented their reasoning.

? FACILITATOR DISCUSSION PROMPTS

1. You have six photos and no manila folders at the station. What do you do? What materials could you improvise with, and what is the minimum you need to validly execute a blinded procedure?
2. Walk through the folder shuffle step by step out loud as if you are actually doing it. At what step are you most at risk of inadvertently revealing which folder contains the suspect?
3. The emotionally distressed victim says: 'Can we just get this over with? Can you just show me the photos?' How do you explain why the procedure matters — in plain language she can understand — without making her feel like a bureaucratic obstacle?
4. After the procedure, what specific language do you use in your report to document why blind administration was not available and why you did not wait for a second officer?
5. You shuffle the folders but realize immediately after that you remember which folder number contains the suspect because you shuffled in a predictable pattern. What do you do?
6. If the agency later adopts lineup software on a tablet, how does that change the solo officer scenario? What documentation would you still need to produce?

SCENARIO 7: THE 'WHAT NOT TO DO' SCENARIO — A BOTCHED IDENTIFICATION

THE SITUATION

Officer Ramirez is investigating a vehicle theft. A witness saw the suspect at the wheel of the stolen car for approximately 20 seconds. Officer Ramirez pulls up a DMV photo of his primary suspect on his laptop and says to the witness: 'Hey, does this look like the guy?' The witness says 'Yeah, I think so.' Officer Ramirez texts his partner: 'Witness confirmed the suspect.' He books the suspect without a formal lineup. The case goes to the DA, who asks about the identification procedure.

CHALLENGES PRESENTED

1. No admonition was given before the single-photo display.
2. A single photo was shown to the primary crime-scene witness — the highest-risk taint scenario.
3. The witness's hedged response ('I think so') was converted to a 'confirmation' in

communication.
4. No blind or blinded administration was used.
5. No BWC recording was made.
6. No confidence statement was captured.
7. No written documentation of the procedure was prepared.

✔ CORRECT ACTIONS

1. The correct action was to prepare a proper six-pack using the DMV photo of the suspect plus five appropriately selected fillers.
2. Administer with blind or blinded protocol; record with BWC.
3. Capture the full admonition and any confidence statement verbatim.
4. Document everything in a supplemental report, including filler sources and the witness's observation conditions at the time of the crime.

× COMMON MISTAKES

1. Showing a single photo from a laptop — violates § 859.7(a)(2) (no blind/blinded admin) and People v. Sanchez (2019).
2. No admonition — violates § 859.7(a)(1).
3. No recording — violates § 859.7(a)(11).
4. Converting 'I think so' to 'confirmed' — potential misrepresentation in official communication and report.
5. No confidence statement — violates § 859.7(a)(9).
6. No documentation — violates § 859.7(a)(10).

⚖️ **LEGAL SIGNIFICANCE:** Every statutory requirement under PC § 859.7 was violated in this scenario. At the suppression hearing, the defense will move to exclude the identification entirely, and will likely succeed. If the ID is the primary evidence linking the suspect to the crime, the DA may be forced to dismiss. An innocent person could remain uncharged if the real suspect is still out there — or a guilty person could walk free. This is precisely the harm the statute was designed to prevent: 'A bad identification is worse than no identification; it creates a path for the guilty to go free and the innocent to be prosecuted.'

? FACILITATOR DISCUSSION PROMPTS

1. Go through the scenario and identify every specific statutory violation by subsection number. How many are there? Which one, on its own, would most likely result in suppression?
2. Officer Ramirez probably thought he was being efficient. What pressures — time, workload, certainty about the suspect — might lead an experienced officer to cut these corners? How do you guard against those pressures in yourself?
3. The witness said 'Yeah, I think so.' That is a hedged identification. At what point did Officer Ramirez convert it into something more — and what are the consequences of that conversion?
4. If you were Officer Ramirez's supervisor and you reviewed his report before it was submitted, what red flags would you look for that might tip you off that the procedure was improper?
5. The DA calls you and says 'I need to fix this case — is there anything we can salvage?' What is your honest assessment of what, if anything, can be recovered?
6. How would you use this scenario in your own training to make the 'why it matters' point to a skeptical officer who thinks these rules are just paperwork?

> ***"A bad identification is worse than no identification; it creates a path for the guilty to go free and the innocent to be prosecuted."***

END OF TRAINING MODULE — Kensington Police Department