Interviews and Eyewitness Identifications
OBJECTIVES

After reading this chapter you will be able to:

• Identify the evidence collected by investigators in the BP gas station robbery and discuss its role in the identification and apprehension of the perpetrator.

• Identify the difference between primary and secondary witnesses and give an example of each.

• Identify and discuss the methods of eyewitness identifications.

• Discuss the advantages and disadvantages of using facial identification software and forensic sketches to create composite pictures of suspects.

• Discuss the value of eyewitness identifications in establishing proof.

• Identify the three phases of human memory and discuss how factors at each phase may affect the retrieval of information from witnesses.

• Identify and discuss the rationale of the recommended lineup procedures.

• Discuss the research that has been conducted on the accuracy of hypnotically elicited testimony.

• Compare and contrast the cognitive interviewing approach with standard police interviews.

• Discuss the contributions of cognitive interviewing in enhancing memory recall.

From the CASE FILE

BP Gas Station Robbery

The introduction to this chapter consists of a police report (edited for length) of the investigation of an armed robbery of a British Petroleum (BP) gas station that occurred on August 22, 2011, in Germantown, Wisconsin (a suburb of Milwaukee). The report serves as an example of a criminal investigation case report and also highlights issues discussed in this chapter, such as the value of eyewitness identification. Issues discussed in other chapters, including the important role of patrol officers in investigations, crime scene photographs, investigation of robbery and auto theft, and the value of DNA, are also present in this report.

Incident Report Number: 11–014277, Report of Officer Toni Olson

On Monday, August 22, 2011, I, Officer Olson, was assigned to investigate and respond to a robbery, which had just occurred at the County Line BP, located at 21962 County Line Road. Officers were advised that the clerk at the BP gas station had called the non-emergency number reporting that a younger white male came into the store and hit him over the head with an unknown object before taking money out of his cash drawer and leaving in a red SUV or truck, northbound on Bell Road. A possible registration of 583RIB was given out for the suspect vehicle. I, along with Lt. Huesemann, Officer Brian Ball, and Officer Daniel Moschea of the Germantown Police Department responded.

Upon arriving on scene, officers were advised that witnesses reported the suspect vehicle leaving the scene of the robbery northbound on Bell Road into a subdivision. The witnesses also stated that they had not seen the suspect vehicle leave the subdivision, which only has two ways to get in and out.

Upon Officer Ball’s arrival, he blocked off the entrance into the subdivision at Bell Road. I blocked off the south entrance to the County Line BP directly off of County Line Road with my squad car and observed two to three vehicles at different pumps and people standing outside. I then advised Lt. Huesemann, who arrived in the area right behind me, to block off the intersection of Hollow Lane and County Line Road, which is the second point of access into the subdivision. Other units assisted in setting up a perimeter around the subdivision.

I first made contact with a subject who stated he witnessed the clerk and suspect struggling, leaving the store, and the suspect vehicle leaving the area. This witness was identified
as Daniel A. Kobcheck (w/m, 05-21-52). Kobcheck stated that he was gassing up his truck and a gas can and had parked his vehicle on the north set of pumps. He stated upon his arrival, he noticed a red Jeep Grand Cherokee backed up directly in front of the air pumps. Kobcheck stated he noticed the vehicle due to its engine running and an extremely loud exhaust. Kobcheck further described the suspect vehicle as an older, possibly 1984 to 1985, red Jeep Grand Cherokee.

Kobcheck informed me that while he was gassing up the gas can, his attention was brought to the front of the store when he observed the clerk chasing a white male subject out of the store. He stated the clerk was yelling at the suspect, who eventually got into the red Jeep Cherokee. Kobcheck stated the clerk had held onto the driver side door of the Jeep as the subject tried to close it and drive away, at which time Kobcheck yelled for the clerk to let it go. Kobcheck stated the Jeep then sped out of the west parking lot of the gas station, turning northbound onto Bell Road. Kobcheck stated he lives in the subdivision behind the gas station and knows there are only two ways to access the subdivision.

Kobcheck then told the clerk to go inside and call the police, at which time he stated he went to the south side of the parking lot parallel with County Line Road to keep an eye on the other entrance/exit to the subdivision, Hollow Lane. Kobcheck stated he did not see the suspect vehicle exit the subdivision at any point. I then asked Kobcheck if he could stay at his location and notify law enforcement if he did observe the vehicle leave the area.

I then went into the store and made contact with the complainant, who was identified as Ejaz Pasool (m/a 3-25-61). Pasool was visibly shaken up and immediately showed me his left hand and forearm, stating he was struck several times. Pasool denied any emergency treatment at that time.

Pasool informed me that the suspect had entered the store several minutes prior to the robbery. He stated that the subject immediately went to the soda cooler, taking a can of Mountain Dew or Diet Mountain Dew out of the cooler. Pasool stated the subject then asked him where the beef jerky was located in the store, at which time he pointed in the direction of the front door/main entrance. Pasool stated the suspect then walked over to the area where the beef jerky was located and stood in front of it. Pasool stated that there were approximately two other customers in the store at the same time, however, upon them leaving, the suspect walked to the area in front of the cashier counter and inquired about several different candy bars and other products, not making sense. Pasool stated that the suspect

then placed the can of Mountain Dew onto the counter, at which time he asked the suspect, “What do you want?” Pasool stated that the suspect replied by stating, “I need drugs.” Pasool told the suspect he was sorry but he did not have any drugs. The suspect then handed Pasool four quarters to pay for the Mountain Dew, at which time Pasool opened the cash register. Pasool stated that upon opening the cash register, the suspect asked, “Do you have that carton?” while looking at the cigarettes behind Pasool. Pasool stated that he then turned around with the cash register still open. Pasool stated that as he turned back around to ask the suspect what kind of cigarettes he wanted, the suspect was swinging a long object towards him. Pasool stated that the object was in the suspect’s right hand and was approximately 12” in length and hard. Pasool could give no further description of the weapon but stated that as he was trying to defend himself by putting his arms up in front of him, the suspect hit him two to three times in the left hand and arm. Pasool stated while the suspect was swinging the object, he hit the cigarette dispenser above the counter and had been reaching across the counter with his left hand in an attempt to take cash from the cash register. Pasool stated that he believes the suspect took mostly $20 bills and possibly one or two $10 bills from the cash register drawer.

Pasool stated that while the suspect was grabbing the cash from the drawer, the two had struggled back and forth for a short time before the suspect ran out the front door. Pasool stated he ran after the suspect and observed him getting into a red Jeep, which was parked on the west side of the building in front of the air machine. Pasool stated that as the suspect got into the Jeep, he grabbed ahold of the driver side door but eventually had to let go as the suspect sped off. Pasool stated that the suspect left northbound on Bell Road and did not believe there was anyone else in the Jeep, and described the Jeep as “rusty.” Pasool stated at that time, a customer who was outside of the store told him to go inside and call 911. Pasool then went inside and called the non-emergency number, reporting the incident. Pasool stated that he stayed inside the store and continued to wait on customers and spoke with officers upon their arrival. Pasool also stated he had contacted his manager, who was later identified as Waseem M. Deg (m/a 1-4-51), who arrived at the store a short time later.

Pasool described the suspect as having three to four days of facial hair growth. He also stated he believed the suspect was a white male, approximately 25 to 30 years of age, wearing blue jeans and a dark top. He believed the suspect was approximately 5’9”, 130 lbs., and wearing a dark
colored ball cap. Pasool stated the suspect did not look familiar to him. Pasool also stated that at no time did he give permission for anyone to strike him or take money or merchandise from the store.

I then made contact with a female identified as Marie E. Saunders (f/w 6-11-33), who stated she was parked outside of the gas station getting gas when she heard an argument and people yelling. She stated she witnessed two subjects struggling, followed by one of the subjects getting into a red Jeep and going northbound on Bell Road.

I also made contact with a witness identified as Michael J. Jones (m/w 7-18-57). Jones stated he was also outside of the gas station when the altercation occurred and that he assisted Kobcheck with making sure the suspect vehicle did not exit the subdivision.

I then re-contacted Kobcheck to get a better description of the suspect. Kobcheck stated that the suspect was a white male, “clean cut,” approximately 6’1”, 140 lbs., wearing a dark shirt. Kobcheck was certain the suspect vehicle was a Jeep Grand Cherokee, red in color. I asked Kobcheck again if he was certain the Jeep did not exit the subdivision, at which time he informed me that there was approximately a one- to two-minute time frame where he was not watching the intersection of Hollow Lane and County Line Road, when he went into the store to check on the clerk. Kobcheck stated that the suspect vehicle had a registration of 583R1B.

Officers were advised by dispatch that the suspect vehicle plate information, 583R1B, was coming back “not on file” through the Department of Transportation. Officers were then later advised by dispatch that a registration plate of 583RBT was listed to a 1998 Jeep Grand Cherokee SUV, red in color, to David W. Anders (m/w 4-28-58) of 4824 N. 114th Street, Milwaukee. This vehicle matched the description of the suspect vehicle and had been entered as a stolen vehicle through the Brown Deer Police Department [a city about ten miles away from where the robbery occurred] as of the morning of Monday 8-22-11.

Dispatch later advised squads that they had received information from the Mequon Police Department [a neighboring jurisdiction] that the suspect vehicle was currently unoccupied in the Pick ‘N’ Save grocery store parking lot, which was located at 18273 County Line Road in the Village of Menomonee Falls [approximately three miles from the BP gas station]. Officer Ball, Lt. Huesemann, Officer Moschea, and Detective Yogerst responded to the scene.

I then made contact with the manager of the BP gas station, who was identified as Waseem Deg. Deg had Pasool close out his cash register, and it was determined that approximately $202.00 of U.S. currency was missing from the cash register.

I took several digital photographs of the County Line BP gas station, both inside and out. I also took photographs of the refrigerator cooler from where the suspect took the can of Mountain Dew; the damaged cigarette dispenser, which was struck by an unknown blunt object; and several $1 bills, which had fallen onto the floor behind the counter during the struggle. Detective Yogerst processed the scene for other items of evidentiary value; however, nothing of value was recovered from inside the store.

I made telephone contact with the owner of the red Jeep Grand Cherokee, David W. Anders. Anders confirmed that he had filled out a vehicle theft report with the Brown Deer Police Department on 8-22-11 at approximately 11:30 a.m. Anders stated that he drove his 1998 red Jeep Grand Cherokee with registration number 583RBT to the Papa John’s at the intersection of Bradley and Sherman at approximately 11 a.m. He stated when he went out to his vehicle around 11:30 a.m. to get something from inside of it, the vehicle was gone.

**Supplement Report, Number: 11–014277, Report of Officer Brian Ball**

Upon arrival in the area, I assisted Lt. Huesemann in canvassing the neighborhood in the area in which the vehicle was believed to have fled. Upon proceeding east on Indian Parkway, I observed, in the tall grass on the north side of the road, a black sweatshirt or shirt. I exited my patrol car and observed that the sweatshirt appeared to have been recently discarded, as it was lying on top of some tall grass. The sweatshirt itself was also in good condition and did not appear to have been weathered by rain or any other elements. That sweatshirt was later retained and placed in property inventory. We continued to check the neighborhood, but we did not locate any vehicles.

At approximately 4:40 p.m. I made contact with David S. Grabowski (m/w 5-4-32) and his wife, Gloria H. Grabowski (f/w 12-30-32), at their residence on Indian Parkway. I was advised that they observed a red older model SUV traveling eastbound on Indian Parkway. Gloria stated the vehicle had an extremely loud exhaust and it appeared to be going fast. David repeated the same. Neither Gloria nor David had ever seen the vehicle in the neighborhood before.

While traveling on Bell Road, I observed a subject in his yard, identified as Edward J. Reel (m/w 7-2-42), who advised me that he had seen a red SUV with an extremely
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PHOTO 6.3

PHOTO 6.4
In loud exhaust traveling northbound on Bell Road past his residence. Reel stated that he did not observe the operator and said that he had no additional information.

At approximately 4:52 p.m., dispatch advised they received a call from the Mequon Police Department reporting the suspect vehicle may be parked in the parking lot of the Pick ‘N’ Save grocery store on County Line Road. It was later determined that the wife of a Mequon police officer was witness to the vehicle’s presence, and she had received information from that Mequon officer regarding the robbery and to look out for that vehicle while she was shopping in the area.

Upon arrival at Pick ‘N’ Save, I drove through the lot and observed an older model Jeep Grand Cherokee, red in color, with plate 583RBT, parked in the center lot approximately 100 feet from the entrance to the store. The vehicle was identified as the suspect vehicle. A perimeter was set up at all the possible exits. At approximately 5:45 p.m., after the Menomonee Falls Police Department officers checked the inside of Pick ‘N’ Save, it was determined that the suspect was not present. Those officers also checked the remaining businesses located at the strip mall to determine if the suspect may have gone into one of those businesses requesting assistance or use of a phone, etc. None of the businesses checked had information regarding unusual behavior by any patron.

Prior to having the vehicle towed, Detective Yogerst photographed the vehicle and recovered a $20 bill off the floor of the driver’s seat and later placed it in property inventory.

While Detective Yogerst completed the photography of the vehicle, I checked the garbage cans adjacent to the entrance/exit door at Pick ‘N’ Save. Upon opening the garbage lids, I noticed that the garbage had recently been emptied and there was limited trash inside the garbage. In one garbage can I observed, on top of some miscellaneous papers, a Diet Mountain Dew can. The initial report by the victim suggested that the suspect may have taken a Mountain Dew can from the store at the time of the robbery. Located in the garbage can which contained the Mountain Dew can, I observed a black and white Nike baseball cap that appeared to be in relatively good condition. Both the can and the hat were recovered as evidence and later placed in property inventory.

The sweatshirt, baseball cap, $20 bill and Diet Mountain Dew can were photographed prior to being placed in property inventory.
PHOTO 6.8

PHOTO 6.9
Supplement Report, Number: 11–014277, Report of Officer Jeff Stieve

On Tuesday, August 23, 2011, at 9:30 a.m., Officer Jeff Stieve and Detective Mike Yogerst inspected the red 1998 Jeep Cherokee, plate 583RBT, within the garage of the Germantown PD. The following items were collected from the vehicle and inventoried (PI 28512):

1. U.S. currency—$20 bill, serial number IG93458916B, collected at 10:20 a.m. from underneath the front driver’s side seat
2. U.S. currency—$1 bill, serial number E21181706D, collected at 10:23 a.m., from underneath the front driver’s side seat
3. One plastic 20 oz. Coca Cola bottle, empty, collected from the front right passenger side floor at 10:23 a.m.
4. One silver key, collected at 10:40 a.m. from the front driver side floor
5. Three wet DNA swabs:
   a) Swab A collected at 10:28 a.m. from the front driver side, inside the door handle
   b) Swab B collected at 10:31 a.m. from the left side of the steering wheel
   c) Swab C collected at 10:33 a.m. from the right side of the steering wheel

Supplement Report, Number: 11–014277, Report of Officer Brian Ball

On Tuesday, August 23, 2011, I conducted follow-up in the investigation of this incident. During the initial complaint, and after receiving the information regarding the suspect description, my memory recalled an incident that I investigated recently involving a male subject who was identified as Russell D. Warchol. His physical descriptors, including height, weight, and general appearance, along with facial hair, was consistent with the description provided by the witnesses to this incident. Additionally, as a result of that original investigation, I learned that the suspect’s girlfriend is employed at Stein’s Garden and Gifts, located on Appleton Avenue approximately two blocks north from Pick ‘N’ Save.

Warchol has a lengthy criminal history, including property crimes and drug violations. During my earlier investigation,
I also learned that Warchol and his girlfriend were homeless and living out of a vehicle in a county park.

On August 23, 2011, I made contact with the manager at Stein’s Garden and Gift’s, Gwen Charowski. She stated that on Monday, August 22, 2011 (the day of the robbery), Angela Goler (believed to be Warchol’s girlfriend) was working at the store, and at one point Angela asked her if she could go outside. Charowski stated that this incident occurred sometime between 1:30 p.m. and 3:00 p.m. Upon looking out into the parking lot, she observed Goler standing at the driver’s side of a red, boxy-looking SUV. I presented Charowski with several black and white photographs of miscellaneous SUVs. I asked her if she recognized any of the images as the vehicle she saw in the parking lot the day before. Charowski looked at the black and white photos for approximately thirty seconds and pointed to the picture of the Jeep Grand Cherokee and she stated that she believed that was the vehicle that Angela Goler was standing by in the parking outside of Stein’s on August 22, 2011. I have no further information.

**Supplement Report, Number: 11–014277, Report of Detective Michael Yogerst**

On 8-22-11, I responded to the area of Bell Road and County Line Road to assist in the investigation of a robbery occurring at that location. I processed the counter surface and the area adjacent to it for fingerprints, with negative results. I was advised that video surveillance equipment on the premise had not been operating at the time of the incident. I was advised by Officer Olson that the suspect had purchased a can of Mountain Dew, either regular or diet, and based on the search of the scene it appeared that the can of soda was taken by the suspect. I was also advised that the victim provided a description of the suspect wearing a black baseball type hat.

On 8-23-11, I made contact with the Brown Deer Police Department to obtain information about the stolen Jeep. At 1:15 p.m. on 8-23-11, I spoke with David Anders, the owner of the recovered vehicle. Anders stated that before his vehicle was stolen from the parking lot at Papa John’s, a male subject had come into the store and indicated that his car had broken down. According to Anders, the subject did not buy anything and left the store. According to Anders, this occurred shortly before he discovered his vehicle stolen. Mr. Anders indicated to me that there should be in-store video surveillance, which may provide a view of the subject who came into the store prior to the vehicle being stolen.

Arrangements were made through the Brown Deer Police Department to obtain any video surveillance that is available. During the course of the investigation, I received information that Officer Ball had previous contact with a subject by the name of Russell D. Warchol (m/w 12-16-72) and that this subject matches the description of the suspect of the BP gas station robbery. I contacted the Washington County Sheriff’s Department for further information and was advised that Warchol was currently in custody in the Ozaukee County jail awaiting a preliminary hearing. I was informed that Warchol had not been in continuous custody since his earlier arrest by Officer Ball.

I requested that the Ozaukee County jail provide a series of photographs to be used for a photo lineup with the victim in the robbery incident. I picked up the lineup photos from the Ozaukee County jail on 8-24-11 and met with Ejaz Pasool at the BP gas station. While at the gas station, I reviewed the photo array instructions with Mr. Pasool, explaining to him that he is not required to pick someone out and the person involved in the incident may or may not be among the images he was about to be shown. I then provided the witness, Mr. Pasool, with seven folders, six of which contained the images provided by the Ozaukee County jail.

The photos had been placed in folders number one through seven, six of which contained images. The seventh was empty and was included to aid in the random shuffling of the images prior to Mr. Pasool being presented with the folders. The folders were presented to Mr. Pasool one at a time, allowing him to look at the image and then proceeding to the next. After viewing the folders, Mr. Pasool indicated that the person depicted in folder #4 was the person who assaulted and robbed him at the gas station. Mr. Pasool indicated he was definitely certain that the individual depicted in folder #4 was the individual who had robbed him without his consent [photo #4 was of Russell Warchol].

Based on the positive identification of Mr. Warchol as being the individual who committed the robbery at the BP gas station, I contacted Warchol’s probation officer, Jada Miller. I advised Ms. Miller that the Germantown PD would be requesting charges for robbery while armed, battery, operating a vehicle without owner’s consent, and bail jumping. Ms. Miller indicated that Mr. Warchol would not be released from jail pending his appearance on any current charges. Further investigation is pending at this time.

**Supplement Report, Number: 11–014277, Report of Detective Michael Yogerst**

On 9-7-11, I viewed the video CD from Papa John’s and observed a white male subject depicted in the video wearing a dark-colored sweatshirt and Nike hat, both of which were consistent with those recovered by the Germantown Police Department in the above investigation. Still photographs of the suspect were made and are attached to this investigation.
On 9-8-11, I contacted Public Defender Erin Larsen, who was representing Mr. Warchol. She indicated that Russell Warchol will invoke his Miranda rights and not answer police questions about the BP robbery or the theft of the vehicle.

I advised Assistant District Attorney Peter Cannon that a request would be made for a search warrant to obtain DNA from Russell Warchol to compare with any DNA recovered from the vehicle found in the Pick ‘N’ Save parking lot or to other items relating to the crime.

**Supplement Report, Number: 11–014277, Report of Detective Michael Yogerst**

On 9-11-11, I obtained a search warrant for buccal swabs to be taken from Russell D. Warchol. I met with Mr. Warchol at the County House of Correction, where Warchol was being held on a probation hold pending revocation. I read the attached Miranda form to Mr. Warchol, which Warchol indicated he understood but did not want to answer any questions. He also refused to sign the form. I then served the warrant to Warchol and obtained two buccal swabs obtained by use of sterile cotton swabs and rubbing one on the right inner cheek and one on the inner left cheek between his teeth/gum line and the inner layer of his cheek. The swabs were then packaged according to normal procedure. The swabs were held as evidence in the Germantown Police Department. I returned the warrant to the Washington County Clerk of Courts Office along with a copy of the above-referenced property inventory.

On 9-20-11, I delivered the following items to the Wisconsin crime lab requesting they be examined against Warchol’s known DNA:

1. Diet Mountain Dew can
2. Nike hat
3. Fender sweatshirt
4. Swab from vehicle door handle
5. Swab from left side of the vehicle steering wheel
   1. Swab from the right side of the vehicle steering wheel
   2. Buccal swab standard collected from Russell D. Warchol

On 12-28-11, the Germantown Police Department received a lab report dated 12-21-11. In reviewing the report, analyst Susan V. S. Noll indicated the same male STR DNA profile was obtained from the Nike hat swab, the Fender sweatshirt swabs, and the right steering wheel swabs. This STR DNA profile was compared with the STR DNA profile obtained from the buccal swab standard from Russell D. Warchol and was found to match. Ms. Noll indicated that it was her opinion that the only reasonable explanation was that the contributor of the STR DNA found on the Nike hat, the Fender sweatshirt, and the right side of the steering wheel was Russell D. Warchol, w/m dob 12-16-72. I faxed the above-referenced documents to the Washington County district attorney’s office.

Postscript: Russell D. Warchol pled no contest to robbery with use of force (plea bargain). He was sentenced to five years in prison with four years of extended supervision when released.

Note: Addresses and names of victims and witnesses have been changed.

Case Considerations and Points for Discussion

1. Physical evidence and witnesses played important roles in this investigation. Discuss the value of the information obtained from the witnesses in the investigation, especially the information from the gas station attendant. Discuss the role and value of the Nike hat, the Fender sweatshirt, the Mountain Dew soda can, and the vehicle used in the robbery.
2. What information from witnesses turned out to be accurate? What information was inaccurate?
3. Based on your assessment and understanding of the investigation, what do you think was the most important development or discovery in the investigation? What mistake(s) did Warchol make in perpetrating the crime?
4. What value did DNA have in this investigation?
5. What do you think should be the biggest lessons learned by the police as a result of the investigation?
Interviews Defined

An investigative interview can be defined as any questioning that is intended to produce complete and accurate information regarding a particular crime or regarding a person believed to be responsible for a crime. Interviews are usually nonaccusatory and are conducted to develop information to move a criminal investigation forward. As seen in the BP gas station robbery investigation, the police had reason to interview numerous individuals in an attempt to develop leads, and a witness was able to confirm the identity of the robber in a lineup. As was also seen in the BP investigation, the information developed through witness interviews may not be complete or accurate for a variety of reasons. Depending on the information obtained from a subject, an interview can easily turn into an interrogation, during which accusations may be made and incriminating statements sought. Investigators must be aware of these possibilities throughout the process of collecting and assembling information from witnesses.

Types of Witnesses

Witnesses can be classified as either primary or secondary depending on the information they provide to the police. Primary witnesses have direct knowledge of the crime in question or of the suspected perpetrator of the crime. Some primary witnesses are also eyewitnesses. Eyewitnesses are individuals who saw the crime occur or observed related events that occurred just prior to or just after the crime. Other primary witnesses may not have seen the crime occur but may have heard the crime occur or heard events just before or after the crime. Several primary witnesses were involved in the gas station robbery, including the victim and other patrons at the station at the time of the robbery.

Secondary witnesses are individuals who have information about related events that occurred before or after a crime. In the BP robbery, the woman who reported the red Jeep in the grocery store parking lot and the workers at the pizza shop would best be considered secondary witnesses.

Although secondary may imply less valuable, that is not the case. Secondary witnesses provide critical information in many investigations that leads to the crime being discovered and/or solved. For example, in one case the perpetrator of a homicide was identified after a barber called the police to report that the mother of one of his clients had told him about the strange behavior of her boyfriend, the perpetrator (see From the Case File in Chapter 10). The barber was a secondary witness but provided the critical information in the investigation. In another case a woman called her physician to get an oxytocin prescription filled. The receptionist informed the woman that in order to do so she would need to make an appointment with the physician. The woman indicated she was unable to go to the doctor’s office because “my child died last night.” The woman pleaded for the prescription to be filled without an appointment. The receptionist refused. After the phone call with the woman ended, the receptionist called the police to report this strange conversation. The police also found this to be odd; they went to the woman’s home and discovered the body of a dead baby. The baby had died from severe maltreatment and abuse. The woman and her boyfriend were arrested and charged with homicide. Like the barber, the receptionist was a secondary witness who provided critical information to the police.

Types of Information Obtained From Witnesses

A multitude of information may be obtained from witnesses. Important and potentially valuable information that can be provided by eyewitnesses includes the actions of the perpetrator, the description of the perpetrator, and, most useful, the identification (or name)
Information about the actions of the perpetrator is particularly useful in establishing his or her **modus operandi (MO)**. In turn, this can assist the police in linking crimes to the same perpetrator and may also represent important behavioral evidence. For example, in one series of robberies, the robberies were linked to the same perpetrator (who wore different masks during them) largely due to the witnesses in the robberies reporting that the perpetrator used similar language (“This is no joke,” “Do you think that this is a joke?”). In another example, in a city that experienced hundreds of robberies a year, one series of robberies was committed during which the perpetrator ordered the victims to remove their pants after he took their money. This unique MO, which was established through the statements of victims, allowed the police to link the crimes, look for similarities in the descriptions of the perpetrator provided by victims, and develop information about the geographical area in which the perpetrator was committing the crimes. When the culprit was eventually identified and arrested, the police were able to clear all the crimes believed to have been committed by this individual.

Seemingly small details about the perpetrator’s actions and characteristics can make a big difference in an investigation. For example, in the BP gas station investigation, the witness’s recollection that the perpetrator was wearing a dark hat and took a Mountain Dew can from the store with him turned out to be useful information.

A description of the perpetrator may provide a basis for the development of a composite picture or sketch. A description may also provide enough information to jog the memory of police officers who may have seen the perpetrator or may be familiar with the perpetrator, as was the case in the BP robbery. Once a suspect has been located by the police, an eyewitness may identify the suspect through a show-up, a photo lineup, or a physical lineup.

### Methods of Eyewitness Identification

There are several methods by which an eyewitness may identify a perpetrator. These methods include the following:

- **The witness may provide information for the development of a composite picture of the perpetrator.**
- **The witness may view a single confirmatory photograph.**
- **The witness may view mug books (collections of photographs of previously arrested or detained persons) or school yearbooks.**
- **The witness may view the suspect in a show-up situation, during which the suspect is detained by the police at the scene of the crime or at another place.**
- **The witness may view photographs of the suspect and others in a photo lineup or photo array.**
- **The witness may view the suspect and others in a physical (live) lineup.**

A 2012 national survey of over 600 law enforcement agencies by the Police Executive Research Forum (PERF) revealed that photo lineups were most commonly used for eyewitness identification (94 percent of agencies), followed by show-ups (62 percent), composite sketches (36 percent), mug shot photos (29 percent), and live lineups (21 percent). Most agencies have no written policies regarding the administration of these procedures, although large agencies are more likely to have policies than are small ones.

### DEVELOPMENT OF A COMPOSITE PICTURE OF THE PERPETRATOR

Pictures of suspects can be created via a witness providing descriptive details of the suspect’s face to a police artist who draws a portrait or through composite software, such as

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**Modus operandi (MO):** Also referred to as method of operation, it is the manner in which the perpetrator committed the crime.
FACES (see www.facesid.com). Using FACES, a technician can construct the perpetrator’s face by selecting from nearly 5,000 different facial features (e.g., head shapes, eyebrows, eyes, noses, jaw shapes, facial hair, smile lines, etc.) to create a realistic-looking picture (see Exhibit 6.1). In contrast, sketch artists use their artistic skills to create a portrait of the perpetrator. While drawing methods differ among forensic artists, essentially it involves putting a witness’s description of facial features on paper (see Exhibit 6.2). Both sketches and computer-created composites depend heavily on the interview of the witness, the ability of the witness to provide accurate details, and the skill of the forensic artist or technician in creating the picture. Due to the increased frequency of video surveillance systems capturing images of crimes and criminals, the need for the development of composite pictures of perpetrators is decreasing somewhat.

Computer-based and freestyle methods of constructing composite pictures of perpetrators both have advantages and disadvantages. According to research, one disadvantage of both methods is that witnesses who provide information for the composite picture of a suspect often perform more poorly in subsequent lineup identifications than those who have not provided such information. Basically, the composite construction exercise may influence memory in a negative way.

Artists can incorporate a virtually unlimited number of features into a sketch, but FACES software is more readily available to the police than are capable artists. Both police artist drawings and FACES pictures can score high on realism and therefore are potentially useful in investigations. However, just because the pictures are realistic does not mean they are accurate. More variation generally exists in the realism of artists’ pictures than in composites developed through FACES. Some artists are more skilled than others, and it shows in their sketches. The accuracy of a composite picture depends greatly on the skill of the person creating the picture, his or her ability to elicit accurate information from the witness, and the witness’s ability to provide accurate details.

Regardless of the method used to construct a facial image, the task is fundamentally difficult for the witness. The witness must select or describe individual facial features and then the artist or technician must then combine these features to produce an image of a face. This particularistic approach is not congruent with the more holistic manner in which people perceive and remember faces. As explained by Professor Gary Wells, a noted expert on eyewitness identifications,

Faces are processed not just as sets of separate features but as interactive systems of features that include interfacetal properties such as distance between features, relative sizes, and other topographical types of information. . . . The same nose on two different faces can appear to be a quite different nose; changes in the hair style can make chin lines or lips appear to change; and a simple featural change (e.g., loss of a moustache) can lead a person to notice that a face now looks different, but the person cannot necessarily specify what feature has changed.

Because of the likelihood that a composite picture may not accurately depict the perpetrator, some police departments are reluctant to use or disseminate them except under extraordinary circumstances.
EXHIBIT 6.2

Example of Artist Composite Sketch

An example of a composite sketch developed by a police artist and the mug shot photographs of the suspect. Do you see similarities between the sketch and photos?
circumstances. If it turns out that the composite picture does not resemble the suspect/defendant, it may work to the detriment of the police and prosecutor. The inaccurate picture may create doubt in the minds of jurors about the responsibility of the defendant for the crime, despite other evidence in the case. Another potential problem is that pictures may generate numerous false leads and contribute to an unproductive investigation, even if they do resemble the suspect.

CONFIRMATORY PHOTOGRAPH
If the witness knows the identity of the perpetrator, the police may show a single photograph to the witness to confirm the perpetrator’s identity. The showing of a single photograph for identification purposes in any other circumstances should be avoided.

MUG BOOKS AND YEARBOOKS
When the police have not yet identified a suspect and there are few other leads to pursue, the police may request that the witness view mug shot books in order to possibly identify

A Hispanic male, described by his victims to be in his late twenties, was believed to be responsible for numerous sexual assaults in the New York metropolitan area. Four victims provided descriptions that artists used to develop composite sketches. The four sketches shown here are of the same perpetrator. Notice the considerable variation across the composite sketches.
the perpetrator. Such collections include photographs of previously arrested or detained subjects and are most often stored on a computer. These photographs should be organized in ways to limit the number that a witness must review. For example, a robbery victim should likely be shown only photos of individuals known to live or spend time in the area of the city in which the crime occurred. In addition, to minimize bias and prevent false identifications, mug shots should be organized by format (e.g., black-and-white photos, color, digital) and by general characteristics of the subjects (e.g., race, sex, age). Only recent photos of subjects should be included and only one photo of each. Most often the viewing of mug shot photographs is a rather unproductive activity, akin to finding a needle in a haystack. If a witness knows or suspects the perpetrator is a student at a particular school, the viewing of a yearbook may be an option for identification.

**SHOW-UP IDENTIFICATIONS**

A show-up identification, or curbside identification, involves bringing the suspect back to the scene or to the location of the witness or bringing the witness to the location of the suspect to determine whether the witness can identify the suspect as the perpetrator of the crime. Show-ups are most often conducted when the suspect flees the scene but is quickly apprehended by the police. Show-up identifications are more frequently used than both photo and live lineups combined. Logistically, it is a simple procedure; however, show-ups are quite suggestive and, as a result, may lead to false identifications. Show-ups are suggestive because the single person available to be identified has already been detained by the police under suspicion of being a suspect in the crime. Certainly it is possible the police could detain the wrong person as a possible suspect. Ideally, efforts to make the show-up less suggestive should be taken (e.g., the suspect should not be viewed in a police car or when handcuffed), although these efforts may raise safety and other concerns.

Not surprisingly, misidentification is most likely if the detained subject is wearing clothing similar to that worn by the culprit or the subject generally resembles the culprit.

Despite the potential issues associated with them, show-ups may offer some advantages. With a show-up, an identification is usually made quickly after the crime has occurred, so the witness’s memory may be fresh. Second, the police are probably less sure the suspect is the culprit in a show-up situation than in a lineup, during which the police are often looking for confirmation rather than information. As a result, there may be less pressure, subtle or otherwise, placed on the witness by the police in a show-up as opposed to a lineup. This may lessen the chances of a false identification in the show-up situation. The courts have generally supported the practice of show-ups and have ruled that a suspect does not have the right to counsel at a show-up.

**PHOTO LINEUPS**

A photo lineup is used when investigators have reason to believe a particular individual is the culprit in a particular crime. As discussed in the chapter introduction, with a photo lineup, a photo of the person who investigators believe is the culprit is shown to a witness, along with usually five or six others who have characteristics consistent with the description provided by the witness (these other photos are referred to as foils, fillers, or distractors). Witnesses may be shown individual photographs one at a time (a sequential lineup), or the photos may be shown at the same time (a simultaneous lineup; see below for a discussion of recommended lineup procedures). The witness is typically asked to take a good look at each of the photographs and to indicate whether any individual included in the lineup is the person who committed the crime. If a photo is selected, then the witness may be asked how confident he or she is that the person identified is actually the culprit. This process is sort of like a multiple-choice test, whereas the development of a composite picture is more like an essay test. As discussed in detail later, the procedures used in constructing and conducting a photo lineup can greatly affect the accuracy of the results. Similar to show-ups, a suspect does not have the right to counsel at a photo lineup procedure.
LIVE LINEUPS

A live lineup (or physical lineup) involves witnesses viewing the suspect and other subjects in a controlled setting, most often at a police station or jail. Usually the witness views the individuals through one-way glass. Each individual may be asked to speak or to say a certain phrase (e.g., “Give me all your money”). Physical lineups usually consist of six people—the person the police believe is the perpetrator of the crime and five others. The foils are usually individuals who are in jail at the time the lineup is conducted. The use of live lineups is limited due to the amount of time and effort involved in conducting them; photo lineups are generally an easier alternative. As with show-ups and photo lineups, the procedures used in conducting a physical lineup can greatly affect the accuracy of the results. As a rule, the foils should be selected on the basis of the initial description provided by the witness; at minimum the race and gender of the foils must be the same as the suspect. All the participants in the lineup should be similarly dressed, especially if the suspect was described by the witness as wearing certain clothing. These and other factors are considered by the courts in determining the fairness of the procedure and the potentially suggestive nature of the identification. Suspects have the right to have counsel present at a physical lineup, but they cannot refuse to participate, even though their participation may be incriminating.

*** Value of Eyewitness Identifications in Establishing Proof

Depending on the procedures used to collect it, eyewitness identification evidence can be one of the least reliable types of evidence in a criminal investigation. According to the Innocence
Project, eyewitness misidentification is a contributing factor in 75 percent of wrongful convictions, and, according to memory researcher Gary Wells, “[a]nalyses of what went wrong in producing more than 1,000 convictions of innocent people have revealed that the single largest factor leading to these false convictions was eyewitness error.” In nearly all of these cases, DNA evidence proved that the conviction was false. What remains unknown is the number of false convictions where there is no DNA evidence to help establish innocence. Clearly, in spite of its potential unreliability, eyewitness identification is extremely persuasive in establishing proof. In fact, the only evidence that is more persuasive is a confession. A primary reason for the persuasiveness of eyewitness identification evidence is that witnesses often express high confidence in their judgments and in the accuracy of their identifications. This confidence may be quite influential on investigators, prosecuting attorneys, judges, and juries. For example, in a case from Georgia, a sexual assault victim identified a photo of her attacker in a photo lineup. “From zero to 100 percent, how sure are you?” the detective asked. “I’m 120 percent sure,” the woman answered. Well, she was 120 percent wrong. DNA analysis led to the exoneration of Willie “Pete” Williams for the crime. He spent nearly twenty-two years in prison for a crime he did not commit.

The Memory Process and the Identification Task

The human memory and its associated processes have been the subject of countless theories and research studies. At the simplest level, memory consists of three phases: encoding, storage, and retrieval. Sometimes the phases of memory are referred to as acquisition,
Chapter 6 • Interviews and Eyewitness Identifications

Retention, and retrieval. The **encoding stage** is when the event or other stimulus is noticed, perceived, and represented in the individual's mind. The **retention stage** involves the activation of a mental record of the event and the “filing” of the information; the information is placed into storage. Information may be stored in short-term or long-term memory. Long-term memory has unlimited capacity, but not all information gets transferred from short-term memory to long-term memory. Information that is stored in short-term and long-term memory is always changing; new things enter, and other things are forgotten. The **retrieval stage** occurs when the mental record of the event or stimulus is activated and the “file” is opened. Retrieval brings about recollection.

During the encoding–storage–retrieval process, many things may happen to inhibit or distort accurate memory. For example, in the encoding stage, it is impossible to notice every single detail of the incident when a crime is committed. Rather, only certain dimensions of the situation, those deemed most significant, may be encoded (e.g., “I see that he has a gun, a big gun, he is pointing it in my face, he is telling me to give him all my money”). If minimal attention is given to a particular dimension of a situation, it is likely that dimension will not be encoded or will be encoded inaccurately. During the retention stage, details of the event may be forgotten or be distorted by postevent information in the form of other witness accounts or investigator statements. During the retrieval stage, a witness searches his or her memory and tries to recall what happened or who committed the crime. Retrieval may take the form of reporting to the police, viewing lineups, or testifying in court. At this stage the circumstances under which the retrieval occurs may affect the accuracy of the information recalled. Errors and distortions can occur at each stage of memory.

### FACTORS THAT INFLUENCE THE ACCURACY OF EYEWITNESS EVIDENCE

Factors at each stage of the memory process may affect the accuracy of an eyewitness account or identification. First, during the acquisition stage, factors that relate to the circumstances and nature of the event, as well as the characteristics of the witness, may affect the witness's ability to perceive the event (and to recall it). For instance, with regard to the circumstances of the event, it is reasonable to expect that factors such as lighting conditions, distance, and obstructed views would have an effect. The duration of the event and the amount of time spent actually observing the event may affect accuracy. Longer periods of observation are associated with better memory. However, some estimates—particularly of how long certain events lasted—are frequently inaccurate regardless of the surrounding circumstances of the observation. The nature of the event may also impact the acquisition of information. Events thought to be insignificant at the time of acquisition are less likely to be perceived. Experiences that trigger an emotional arousal are more likely to be
perceived. Research has also shown that even simple disguises (e.g., wearing a cap) can affect the acquisition of facial information and that witnesses are likely to perceive weapons to the detriment of perceiving the features of the person who held the weapon (known as the weapon focus effect).21

Characteristics of witnesses may also have an effect on the acquisition of events and information, and ultimately on the accurate recall of that information. For instance, the psychological condition of the witness may be an important consideration. Research has demonstrated that fear and stress improve physical performance, including eyewitness performance, up to a certain point, but then they become counterproductive (known as the Yerkes–Dodson Law).22 Of course, the physical condition of the observer (e.g., intoxication, eyesight) may influence the accurate acquisition of information. A witness’s expectations may also play a factor: The way one sees events is often the way one would expect events to occur, and the events are interpreted accordingly (see Case in Point 6.1). Interestingly, in one study subjects were asked to estimate a person’s weight after being told some information about that person. Subjects’ estimates of the person’s weight were less when subjects were told that the person was a dancer than when they were told that the person was a truck driver.23 The knowledge that a witness possesses may also affect the acquisition of information. For instance, the eyewitness to a robbery who knows little about guns might simply perceive and describe the gun held by the perpetrator as “big and shiny.” An individual who is knowledgeable about guns may describe the weapon as “a blue metal .357 Glock semi-automatic.” Perhaps relatedly, research has shown that people are better able to describe and recognize faces of their own race or ethnic group than others.24

Regarding inaccurate witness accounts of events, Professor Elizabeth Loftus, a noted expert on eyewitness memory, explains that “if someone has gaps in their narrative, they can fill it with lots of things. They often fill it with their own expectations, and certainly what they may hear from others.”25

Studies of the demographic characteristics of witnesses and the accuracy of their memory show age is the most important factor. Research shows that young children and especially the elderly generally have the poorest perception and memory performance. Younger children have been shown to be more suggestible than older children or adults26 and to offer less complete descriptions.27 Children also tend to have difficulties with accurate perceptions of age, height, and weight.28 The research on the influence of gender on perception and memory is mixed. While some research shows females are more reliable witnesses (but males more confident in their memory),29 generally it has been shown that men and women focus on different aspects of events, people, and situations. Men and women tend to focus on and remember things of interest to them, which are often different.30

Second, several factors may affect the retention or storage of information. One of the more significant factors that may distort memory at this stage is misleading or inaccurate

**CASE in POINT 6.1**

A Shoot-Out or Something Else?

A local police department posted the following message on its Facebook page:

On Saturday at approximately 7:34 p.m. a witness reported seeing occupants of two cars shooting at each other while traveling eastbound on County Line Road. The witness heard what they thought were gun shots, but no weapons were seen, no evidence of gun fire was located. A short time later we received a call of shots fired in the area of Squire Drive. Preliminary investigation is showing the sound is coming from a vehicle that is forcing a backfire as they travel throughout the village. We are confident that this was not gunfire.
information obtained at or near the time of the event. The source of this information could be statements made by other witnesses (hence the importance of separating witnesses prior to questioning), questions asked by authorities, or information contained in newspaper accounts or television coverage. To study how the questions asked of a witness could affect the information stored in memory, researchers had subjects view a film and then asked them questions about it. When asked, “How fast was the car going when it passed the barn?” many subjects responded as though they saw the car pass a barn, when in fact a barn was not even shown in the film. In addition, the time that has elapsed from the event to its recall also affects memory, as memory tends to deteriorate the longer it is stored. Finally, as noted, emotionally arousing events are more likely to be stored in memory, especially long-term memory. However, such memories are just as prone to errors as other memories but likely to be believed with high confidence.

Third, with regard to the retrieval stage, several factors may serve to distort the accuracy of the eyewitness account. Of most concern is the manner in which the retrieval of information occurs. For example, the wording of questions used to elicit memory details may be influential. An experiment was conducted during which subjects viewed films of automobile accidents and then were asked questions about the events depicted in the films. When subjects were asked, “About how fast were the cars going when they smashed into each other?” higher estimates of speed were provided than when questions that contained the words collided, bumped, contacted, or hit instead of smashed were asked. Subjects who were asked about the cars “smashing” were also more likely to state that they saw broken glass, when actually there was no broken glass. Other studies have noted response differences resulting from asking questions with more subtle wording differences, such as “Did you see a gun?” versus “Was there a gun?” (the former question suggests there may have been a gun but that it may not have been seen) or “Did you see a broken headlight?” versus “Did you see the broken headlight?” In essence, leading questions, however subtle, may distort the information retrieved from a witness’s memory.

Finally, it is worthwhile to note that a few studies have examined the accuracy of voice identification and walk/gait identification. Although too little research exists to draw confident conclusions about these issues, the prevailing wisdom is that the identification of unfamiliar voices is often incorrect. The identification of distinct or unusual gait among strangers is more likely to be accurate; however, the accurate recognition of more typical gait even among friends is difficult.

Guidelines for the Collection of Eyewitness Evidence

Given the multitude of factors that may affect the accuracy of eyewitness statements, and given that the courts are generally concerned about the quality of evidence—to the point of not allowing certain of it to be admitted (e.g., hearsay)—one might expect there would be a number of barriers to the admission of eyewitness evidence in court. This, however, is generally not the case, although the courts have recognized the potential problems associated with eyewitness testimony. In the case of Neil v. Biggers (1972), in which a rape victim identified her attacker on the basis of a show-up that took place seven months after the crime, the Supreme Court let the conviction stand but identified five criteria to be considered in determining the accuracy of an eyewitness identification of a suspect. These criteria are the following:

- The eyewitness’s opportunity to view
- The attention paid by the eyewitness
- The accuracy of the witness’s preliminary description of the culprit
- The certainty of the eyewitness
- The amount of time between the event and the attempt to identify
However, these factors have been criticized as an inadequate basis on which to judge the accuracy of eyewitness identifications. One of the criticisms is that some of the factors rely on perceptions of the eyewitness, which is exactly what is questioned in an eyewitness identification.

There are other safeguards in place that may, ideally, prevent false eyewitness identifications from leading to miscarriages of justice. For example, defendants have the right to counsel at live lineups, motions can be made by the defense to suppress eyewitness evidence, eyewitnesses may be cross-examined, and experts can be called to testify on the problems associated with accurate eyewitness identifications. In many respects, however, these safeguards are incomplete and inadequate. The right to counsel exists only at lineups, not photo arrays or show-ups, and most identifications of suspects are from show-ups and photos, not physical lineups. Motions to suppress eyewitness evidence are rarely successful. Cross-examination of eyewitnesses may not be helpful when witnesses are trying to be truthful but are simply mistaken. And eyewitness expert testimony may not overcome the influential nature of eyewitness evidence, may not be allowed by the judge, and may be prohibitively expensive.

Given the potential ramifications of inaccurate eyewitness identifications, several guidelines for the collection of eyewitness identification evidence have been identified by Gary Wells and colleagues. These guidelines and procedures are sometimes referred to as system variables—things that are within the control of investigators to help ensure the collection of accurate eyewitness evidence. In contrast to system variables are estimator variables, which are part of the memory process that may inhibit or distort accurate memory and are beyond the control of investigators. These guidelines are based on theories about human memory, research findings of eyewitness identification studies, and the science of testing. The aim of the guidelines is to improve the quality of the evidence and, accordingly, reduce the risk of mistaken identifications. The authors note that just as there are procedures and rules that must be followed in collecting and presenting physical evidence, such as fingerprints and DNA, so too should there be rules and procedures in collecting and presenting eyewitness identification evidence through lineups and photo arrays.

First, according to Wells and his colleagues, “[t]he person who conducts the line-up or photo-spread should not be aware of which member of the line-up or photo-spread is the suspect.” This recommendation relates to the possibility that an investigator may intentionally, or unknowingly, lead a witness to select a particular lineup member. The process of identification may be one filled with anxiety and uncertainty for the witness, and as a result, the witness may be quite interested in and responsive to the cues of the investigator. Research shows that even subtle cues, such as smiling or other nonverbal actions, can call attention to a particular photograph and lead to false identification. Previous research has also shown that feedback given to the witness about the selection (e.g., “Good, you identified the right guy”) can have dramatic effects on the witness’s confidence about the accuracy of the selection and his or her ability to identify the suspect. This false confidence may translate into increased but unwarranted credibility of the witness in the minds of jurors. In addition, it is not out of the realm of possibility that investigators may knowingly say something to highlight or reinforce a particular person as the suspect/culprit (see Case in Point 6.2). If the person who administers the lineup does not know who the suspect is, then that person is not able to provide any cues or other information to influence the selection, nor can that person provide any feedback to the witness that might distort the witness’s certainty or confidence in the selection. This precaution should allow eyewitness identification to be based on the eyewitness’s memory, not on external information. It should therefore provide for a more valid lineup procedure.

Second, as per Wells and colleagues, “[e]yewitnesses should be told explicitly that the person in question might not be in the line-up or photo-spread and therefore should not feel that they must make an identification. They should also be told that the person administering the line-up does not know which person is the suspect in the case.” The first part of
In an examination of the validity of this photo lineup, an actual photograph of James Washington was presented to fifty people, and they were then asked to select the person most similar to him from the original photo spread. Not one person identified the picture of the subject who was originally believed to be James Washington. What happened? The detective who assembled and administered the photo spread probably facilitated the identification of the wrong suspect in some way.

Research has shown that although warning the witness that the perpetrator may not be in the lineup reduces the rate of incorrect selections when the culprit is indeed not in the lineup, it does not reduce the rate of correct selections when the culprit is present in the lineup. Of course, if all lineups included the actual culprit, this recommendation would be needless, but one should not assume this is the case. If the investigator is so certain the culprit is included in the lineup, this is not necessarily the case. In such a situation, if a person is identified, it would be the wrong person. And, even if the wrong person is selected, the witness may still express high confidence that the person selected was actually the culprit. Eyewitness confidence does not equal eyewitness accuracy. As such, “[t]he relative-judgment process is seductive yet dangerous.”

The second part of the recommendation, that witnesses “should be told that the person administering the line-up does not know which person is the suspect in the case” is related to the first recommendation. Simply, not only should the administrator of the lineup not know who the suspect is in the case, the witness should be told the administrator does not know this information. This may prevent the eyewitness from trying to look to the administrator of the lineup for cues about which person to select.

The third recommendation states that “the suspect should not stand out in the line-up or photo-spread as being different from the distractors based on the eyewitness’s previous description of the culprit or based on other factors that would draw attention to the suspect.” If the suspect stands out in some way from the others in the lineup, it may be difficult to determine whether a selection is based on true recognition or simply on his or her unique characteristic. The bottom line is that the distractors or foils included in the lineup

this recommendation relates to the research that shows eyewitnesses are less likely to identify an innocent suspect if they are told the actual culprit may not be in the lineup. The tendency to identify the person that most resembles the culprit, even if it is not actually the culprit, is known as the \textit{relative-judgment process} (see Case in Point 6.3). According to Wells et al., “[a] relative-judgment process is one in which the eyewitness chooses the line-up member who \textit{most resembles} the culprit \textit{relative to the other members of the line-up}” (emphasis added). This process is not necessarily problematic as long as the actual culprit is in the lineup. If the actual culprit is not in the lineup, a natural tendency may be for the witness to select the person who \textit{most resembles} the mental image of the observed perpetrator. Furthermore, just because an investigator believes the actual culprit is included in the lineup, this is not necessarily the case. In such a situation, if a person is identified, it would be the wrong person. And, even if the wrong person is selected, the witness may still express high confidence that the person selected was actually the culprit. Eyewitness confidence does not equal eyewitness accuracy. As such, “[t]he relative-judgment process is seductive yet dangerous.”

In the case of \textit{South Carolina v. Washington} (1997), a detective investigating a robbery believed that a person by the name of James Washington was responsible for committing the crime. The detective obtained a photograph of a person whom he believed was Washington and placed this photo, along with pictures of five other foils, in a photo lineup. He then showed the lineup to the eyewitness, and, lo and behold, the eyewitness identified “James Washington.” There was only one problem: Subsequent to the photo identification, it was discovered that the detective had made a mistake—the person in the photo thought to be James Washington was not, in fact, James Washington; it was a person who could not have had anything to do with the robbery. In addition, the person in the picture had no resemblance to the real James Washington.
should not necessarily look similar to the suspect, but they should be selected on the basis of the description provided to the investigators by the witness. At the extreme, if foils were included that looked like the suspect, one could conceivably have the suspect and his similar-looking siblings in the lineup. Clearly the chances of identifying and selecting the wrong person would be high in such a circumstance. On the other hand, verbal descriptions of perpetrators provided by witnesses tend to be rather general, and the inclusion of individuals on this basis may allow people with different appearances to be included in the lineup. For example, in the BP gas station robbery discussed in the introduction to this chapter, the gas station attendant described the perpetrator as a white male, approximately twenty-five to thirty years of age, 5'9”, 130 lbs., and with three to four days’ worth of facial hair growth. The other witness described the perpetrator as a white male, “clean cut,” approximately 6’1”, and 140 lbs.” These descriptions are quite general and allow for much variation in the characteristics of the foils to be included in the lineup (see Case in Point 6.4).

There are several potential problems with conducting a lineup on the basis of a witness’s description of the perpetrator. First, what if the description provided by the witness does not actually match the description of the suspect? In such a situation, it is recommended that a blend of the description of the culprit and the features of the suspect be considered when selecting foils in the lineup. Second, what if the suspect has a unique feature, such as a facial scar, that the eyewitness did not mention? If the witness did not mention a unique feature, it may not be necessary to replicate that feature across the members of the lineup. If the unique feature is recognized by the witness, memory recall may be the reason. Third, what if the witness describes the perpetrator as having a unique feature, such as a particular tattoo? One option is to cover that area on each member of the lineup; however, it is possible the unique feature was the aspect to which most attention was paid and the basis on

In 1984 a college student named Jennifer Thompson was raped in her apartment in Burlington, North Carolina. The police asked her to help create a composite sketch of the rapist. The police then received a tip that a local man named Ronald Cotton resembled the composite, and, shortly after the crime, Thompson was shown a photo array containing six photos. With some difficulty, she chose two pictures, one of which was of Cotton. Finally, she said, “I think this is the guy,” pointing to Cotton. “You’re sure?” the lead detective asked, and she responded, “Positive.” Thompson asked, “Did I do OK?” The detectives responded, “You did great.” She has described how those encouraging remarks had the effect of making her more confident in her identification.

The police then showed Thompson a live lineup. Cotton was the only person repeated from the prior photo array. This would make Cotton more familiar to her and might suggest that he was the prime suspect. Nevertheless, Thompson remained hesitant and was having trouble deciding between two people. After several minutes, she told the police that Cotton “looks the most like him.” The lead detective asked “if she was certain,” and she said, “Yes.” Again, the detectives further reinforced her decision. The lead detective told Thompson, “It’s the same person you picked from the photos.” She later described feeling a “huge amount of relief” when told that she had again picked the right person.

At Ronald Cotton’s criminal trial, Thompson agreed she was “absolutely sure” that he was the rapist. Cotton was sentenced to life in prison plus fifty-four years. He served ten-and-a-half years before DNA tests exonerated him and implicated another man, Bobby Poole. Not only did the identification procedures increase Thompson’s confidence in the mistaken memory event, but they also resulted in her rejection of the actual culprit. Poole had been presented to Thompson at a posttrial hearing, and she could not recognize him. “I have never seen him in my life,” she said at the time.

The lead detective in the case, Mike Gauldin, later became police chief. In response to the misidentification of Cotton, he was the first chief in the state to institute a series of new practices, including double-blind lineup procedures. In the years that followed, North Carolina adopted such practices statewide. Ronald Cotton and Jennifer Thompson have since written a book, Picking Cotton, that describes the case and their experiences.
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which an identification would be made. Covering the feature might mean the witness cannot make an identification. The other option is to not even conduct a lineup. With a specific and unique description, there may be little doubt about the identity of the suspect. Lineups are useful when the witness’s description of the perpetrator is vague and when the identity of the perpetrator is uncertain. Finally, what if there is more than one witness and they provide conflicting descriptions of the perpetrator? In this situation it is recommended that separate lineups be constructed for each witness, based on the description of the perpetrator provided by each witness.53

The final recommendation for conducting a lineup is that “a clear statement should be taken from the eyewitness at the time of the identification and prior to any feedback as to his or her confidence that the identified person is the actual culprit.”54 This statement may be the response to the question, “On a scale of one to ten, with ten being absolute certainty and one being absolute uncertainty, how confident are you that the person you identified is the actual culprit?” The confidence expressed by the witness at the time of the identification may be the single most important factor in judging the credibility of that witness and the accuracy of the identification in further proceedings (e.g., at trial). However, as noted earlier, the confidence of a witness about an identification can be affected substantially by events that occur after the identification and that have nothing to do with the witness’s memory. Simply stated, confidence should be based on memory, not outside forces. A clear statement from the witness, along with the administrator not knowing who the suspect is in the lineup, should instill confidence in the selection.

Three other issues are often discussed and debated during the identification process: the use of sequential lineups, the practice of video-recording lineups, and the use of standardized instructions. The use of a sequential lineup involves the eyewitness viewing one lineup member at a time and determining whether that person is the perpetrator. This in contrast to the simultaneous lineup, in which all subjects are viewed by the witness at the same time. The sequential lineup is often recommended as the best practice. The highest-quality research on this issue shows sequential lineups produce fewer identifications55 but also fewer mistaken identifications than simultaneous lineups,56 especially when the culprit is not included in the lineup.57 However, it is important to highlight that witnesses still (wrongly) identified the filler 12.2 percent of the time, as opposed to 18.1 percent of the time in simultaneous lineups.58

Video-recording lineups may offer numerous benefits; however, video-recording by itself does not lessen the chance of false eyewitness identification. In addition, it is unclear how

CASE in POINT 6.4 Variations in Eyewitness Descriptions

As noted, most of the time witnesses are able to provide only general descriptions of perpetrators. This allows investigators leeway when assembling a photo or live lineup as the members of the lineup need only resemble the description provided by the witness. However, some witnesses are better in perceiving details than others. In three separate carjacking crimes committed by the same man, three victim witnesses provided a description of the perpetrator:

- Victim #1: The perpetrator was a black male in his teens.
- Victim #2: The perpetrator was a black male, 5’6”–5’7”, 120 lbs., twenty to twenty-five years old, black hair, fade haircut, wearing a white tank top and green shorts.
- Victim #3: The perpetrator was a black male, 5’8,” late teens or early twenties, medium build, dark complexion, with short hair on the sides of his head and puffy top, wearing a black oversized shirt over a grey shirt, black oversized belt, dark shorts, and a gold chain around his neck.

Sequential lineup: Lineup procedure whereby subjects are viewed by a witness one at a time.

Simultaneous lineup: Lineup procedure whereby subjects are viewed by a witness all at the same time.
video-recording may affect the behavior of witnesses. Videotaping may raise anxiety and actually lessen the chances of accurate eyewitness identification.\textsuperscript{59}

The use of standardized instructions is meant to formalize the use of the guidelines outlined here and to minimize variation in procedures across witnesses.\textsuperscript{60} See Exhibit 6.6 for an example of a police department form with instructions for conducting a photo identification.

The 2012 PERF survey of law enforcement agencies showed that most police departments do not follow all of the recommended guidelines for administering lineups. For example, while the “perpetrator may or may not be present” instruction was used by 84 percent of agencies when conducting photo lineups, most agencies conduct photo lineups in a non-blind manner (69 percent) and use simultaneous lineups (68 percent). A survey conducted in Virginia in 2013 showed that nearly 30 percent of the 144 police departments and sheriff’s offices in the state had no policies regarding the conduct of lineups and another 25 percent were following policies that were two decades old.\textsuperscript{61} Clearly, more work needs to be done to get police department procedures in line with identified best practices. As stated by PERF, “[g]iven the importance of eyewitness identifications in the justice system and the growing number of exonerations of persons who were convicted based on eyewitness identifications, law enforcement agencies should work . . . to assess and refine their current eyewitness identification practices.”\textsuperscript{62}

### Investigative Tools in Interviewing

Given the potential value of accurate information from witnesses in criminal investigations, several “tools” or methods to assist in the collection of such information may be used by investigators. Discussed here are the practice of hypnosis and the more common and accepted method of cognitive interviewing.

#### Hypnosis

Hypnosis is most often simply viewed as an altered state of consciousness characterized by increased responsiveness to suggestion.\textsuperscript{63} It has also been more elaborately defined:

[Hypnosis is] a superficial or deep trance state resembling sleep, induced by suggestions of relaxation and concentrated attention to a single object. The subject becomes highly suggestible and responsive to the hypnotist’s influence, and can be induced to recall forgotten events, become insensitive to pain, control vasomotor changes, and, in the hands of an experienced hypnotherapist, gain relief from tensions, anxieties and other psychological symptoms.\textsuperscript{64}

Hypnosis can be used in the therapeutic setting as well as in the criminal investigative setting. For purposes of criminal investigation, hypnosis focuses on enhancing memory recall of a witness with regard to a criminal event. The theory of hypnosis is that memory occurs at the conscious and subconscious levels. Details about observations are recorded and stored at both levels at the same time. However, a person may not know what has been encoded in the subconscious memory—or, as a defensive mechanism, conscious memories may be pushed to the subconscious level. Hypnosis is a method of retrieving subconscious observations.

The problem with hypnosis is the accuracy of the resulting information. Most research has come to the conclusion that hypnotically elicited testimony is deficient, especially when leading or even specific questions are asked of the subject.\textsuperscript{65} This process can readily result in fabrications or false information, often referred to as confabulation. The Council on Scientific Affairs of the American Medical Association simply concluded that “the use of
hypnosis with witnesses and victims may have serious consequences for the legal process when testimony is based on material that is elicited from a witness who has been hypnotized for purposes of refreshing recollection.” Because of the documented inaccuracies of hypnotically elicited testimony and the severe legal restrictions placed on such testimony, hypnosis is seldom used in criminal investigations today.
Another method of enhancing witness recall is cognitive interviewing. It is this approach that is advocated as best practice by the National Institute of Justice.\textsuperscript{67} The cognitive interview encourages the witness to reinstate the context in which the observed event took place and to search through memory systematically and methodologically for details of the event. It is the interviewer's responsibility to guide the witness through this process and to assist in the retrieval of information.\textsuperscript{68}

As part of the cognitive interview approach, several techniques are used to facilitate memory recall.\textsuperscript{69} First, as noted, the witness is encouraged to re-create the context of the original event. The context consists not only of the event itself but also the physical and psychological characteristics of the environment in which it occurred. An interviewer can assist in the re-creation of the context through instructions. For example, the interviewer can tell the witness, “Try to put yourself back into the same situation as when the crime was committed. Think about where you were standing at the time, what you were thinking about, what you were feeling, and what the room looked like.”\textsuperscript{70} The witness may be asked to think about his or her activities prior to, during, and after the event, and even about activities that took place hours or days before or after the event. Again, the attempt is to get the witness fully immersed in the situation about which details are to be recalled.

Second, the witness is encouraged to concentrate deeply in a focused manner. Concentration is critical when searching through memory for details. The following statement may serve this end:

\begin{quote}
I realize that this is a difficult task, to remember the details of the crime. All of the details are stored in your mind, but you will have to concentrate very hard to recall them. You have all the information, so I'm going to expect you to do most of the work here. I understand that this may be difficult, but try to concentrate as hard as you can.\textsuperscript{71}
\end{quote}

Along these lines, research has shown that deep breathing and eye closure on the part of witnesses can enhance memory, even without using other aspects of cognitive interviewing,\textsuperscript{72} although the benefit of eyes-closed interviewing with children is not well established.\textsuperscript{73} Another important factor in facilitating concentration is avoiding interruptions. Interruptions on the part of the interviewer break the concentration of witnesses and inhibit recall of information. The avoidance of interruptions is the single most important skill in interviewing.\textsuperscript{74} Focused concentration can also be encouraged through open-ended questions and by maintaining eye contact with the witness.

Third, the witness should be encouraged to search memory thoroughly. If you lose your car keys and cannot find them after a couple of minutes of searching, you do not just give up, right? So it is with witnesses searching for details of the crime in a cognitive interview. A thorough search of memory can be encouraged by avoiding certain behaviors, such as the following:\textsuperscript{75}

- Opening the interview with a request for factual details instead of a more personal introduction
- Indicating at the outset that the interview will take only a short time
- Constantly checking the time
- Leaving the radio on and interrupting frequently to listen to incoming calls
- Attending to issues related to other cases
- Fidgeting while sitting
- Standing during the interview (especially by an exit door) when it would be more appropriate to sit
- Speaking quickly
- Asking questions immediately after the [witness] stops responding
- Interrupting in the middle of the [witness’s] response

\textbf{Cognitive interview:}
An approach to investigative interviewing designed to elicit more accurate details from a witness's memory based on deep concentration.
Fourth, varied retrieval of the event should be encouraged. Most common and most natural is for a witness to recall an event in chronological order. However, although describing an event in reverse order requires more concentration and more thought, additional details may be recalled. Reverse order may also reduce extraneous or even deceptive information. Another retrieval method is to ask the witness to slice the event into “frames”—like pictures—and then ask the witness to describe each of the frames. Yet another method is to ask the witness to provide a description of the events from the perspective or location of someone else who was in the area when the crime occurred. The interviewer may ask the witness to describe the event like viewing a film taken from an angle different than that of the witness. This technique may provide additional details about the event and may also reduce the trauma associated with the crime. However, this technique may also encourage the witness to fabricate information or to provide inaccurate information. Accordingly, the interviewer must remind the witness to report only the events and details actually observed.

Finally, during a cognitive interview, other techniques may be used to enhance the recollection of specific pieces of information, such as faces, clothing, vehicles, and license plate numbers. Even though a witness may not be able to recall certain specific information, he or she may have some partial memory about it. Focused questions may be used to help retrieve this potentially useful information. For example, in recalling a license plate of a car involved in a crime, the witness may be asked about the features of the characters on the plate. These questions could include the following: “Was the sequence composed mainly of digits or numbers?” “Were the letters consonants?” “Did two letters occur twice?” “What shape did the first or any other letter have?” “Was the digit pattern familiar in any way (similar to a friend’s phone number)?” and “What color were the characters and the background?”

This sort of probing may help stimulate the witness’s memory.

**COGNITIVE INTERVIEW IN CONTRAST WITH THE STANDARD POLICE INTERVIEW**

The cognitive interviewing approach is quite different from the approach taken during standard police interviews. Whereas cognitive interviewing encourages the witness to explore deep memory and is open ended in nature, the standard interviewing approach encourages only superficial exploration and is more closed ended in nature. In standard police interviews, less than half of the speaking is done by the witness. That is not the case with cognitive interviews. In a study of standard police interviews with robbery victims and witnesses, researchers found numerous problems that inhibited memory recall on the part of the subjects. First, interviewers frequently interrupted witnesses’ descriptions and accounts of the event. This led to witnesses providing short, quick answers and encouraged witnesses to be less focused.

The study also found that interviewers asked too many short-answer, closed-ended questions. On average, interviewers asked three open-ended questions (e.g., “Can you describe the subject’s clothing?”) and twenty-six short-answer questions (e.g., “What color was the subject’s shirt?”). The short-answer questions may help keep the interview on track, but they require less concentration on the part of the witness and encourage short, incomplete answers. In addition, because the witness is placed in a passive role with such questions, if the interviewer does not think to ask a particular question, the witness may not provide information that could be useful.

The final common and significant problem with traditional police interviews is the inappropriate, arbitrary, or rigid sequencing of questions. The researchers found that interviewers often used a sequence of questions that was not congruent with the witness’s memory of the event. The researchers explained that on one occasion, a witness began describing the suspect by providing an estimate of the subject’s height. She was interrupted by the investigator and asked to begin instead with an estimate of the subject’s age. When the researchers asked the investigator about this, the investigator responded the only reason he interrupted the
witness was because age was asked about first on the report he was required to complete. In cases like this, the rigid sequencing of questions may inhibit accurate memory recall.

Numerous other problems, although less common, were also evident during the interviews. Interviewers sometimes used negative phrasing (e.g., “You don’t remember, do you, if . . . ?”), suggesting to the witness the interviewer did not believe she or he could recall the details. This sort of questioning also makes it easy for the witness to respond with “I don’t know” and discourages a thorough search of memory. In some cases investigators used nonneutral or leading questions (e.g., “Was the gun silver?”), which may suggest to the witness that the investigator’s description is definitely correct and may also bias the witness’s later recollection of the event. The researchers also observed interviewers using inappropriate language, such as wording that was too formal (e.g., “Did you have occasion earlier today to witness . . .”), too stylized (e.g., “Calling your attention to the incident . . .”), or too intelligent (e.g., “So you were in a supine position?”). Yet another problem was the rapid rate of questioning. On average only one second elapsed between the end of the witness’s answer and the interviewer’s next question. This clearly inhibited witnesses from elaborating or clarifying previous statements. On some occasions the researchers observed interviewers making judgmental, rude, or insensitive comments to the witnesses (e.g., “[Previous investigators] thought that it was funny that you had all of your clothes on and [the suspect] didn’t have all his clothes on”). Rapport and trust can be quickly destroyed with such comments. Finally, a lack of follow-up on potential leads was noted at times. For instance, on one occasion a witness stated that the suspect “looked like a librarian,” but there was no follow-up questioning to explore the meaning of this descriptive statement.

The structure of a traditional police interview is conducive to note taking and report writing. Traditional police interviews also take relatively little time to complete. With cognitive interviews, on the other hand, it is more difficult for an interviewer to record the potential multitude of details provided. The difficulty in documenting an interview through notes provides a powerful rationale for video- or audio-recording interviews. Indeed, research has shown much information is lost in verbatim contemporaneous accounts of interviews. Cognitive interviews also usually take considerably more time to conduct, require more mental concentration on the part of the interviewer, and require more flexibility. However, cognitive interviewing requires little training, the method is easily administered, witnesses should have few reservations about participating in such an interview, and the method raises few legal issues compared with hypnosis.

The most significant benefit of the cognitive interviewing approach is that it has been shown to be an effective tool in enhancing memory recall. In a study that examined the amount and accuracy of information obtained by detectives in standard police interviews and cognitive interviews, it was demonstrated that after being trained in the cognitive interview approach, detectives were able to obtain 47 percent more information from witnesses, and this information was deemed highly accurate—that is, it corroborated with other independent information produced in the investigation. However, another study showed the cognitive interview subjects were still prone to suggestibility errors. In summary, overall, research confirms “that cognitive interviewing reliably enhances the completeness of a witness’s recollection, without increasing the number of incorrect or confabulated bits of information generated.”

**OTHER GUIDELINES FOR CONDUCTING POLICE INTERVIEWS**

There are other principles and basic rules associated with conducting effective police interviews. First, interviewers must keep an open mind when interpreting the actions of other people. Because certain actions do not make sense to you does not mean that they do not make sense at all. This has been referred to as avoiding the “me” theory. Second, as discussed in this chapter, interviewers must have at least a basic understanding of memory, how it works, and its limitations. This knowledge will assist in accurately interpreting and
assessing the information obtained through an investigative interview. Third, investigators should realize it is difficult to accurately identify lying and truth-telling (see Chapter 7 for more details) and that inaccurate information can be provided without the subject intentionally being deceptive. These understandings will provide investigators with perspective on the information obtained from interviews.

On a more practical level, there are other guidelines to following when conducting interviews. First, witnesses should be separated and interviewed one at a time so independent accounts from each witness can be received, compared, and evaluated. Reasonable precautions should be taken to prevent witnesses from sharing information with each other because witnesses can easily be influenced by the accounts of others. Indeed, misinformation from other sources can have strong and lasting effects. However, in order to avoid other negative consequences, a balance is important in this regard (see Case in Point 6.5).

Interviews should be conducted in places free from distractions. The witness’s work location is generally a poor place to conduct an investigative interview; the police station or even the witness’s home are generally better options, although confidentiality of the witness and the interview must also be taken into consideration. Interviews should be conducted as soon as possible after the event except under extraordinary circumstances, such as when a witness has a health problem. This should allow information about the event to be more easily recalled.

Finally, it is important for investigators to build a rapport with witnesses. It is suggested that interviewers engage in matching or mirroring techniques in an effort to build rapport. That is, interviewers should match or mirror the witness’s kinesics (i.e., display the same

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**CASE in POINT 6.5 Witness Security versus Witness Compassion**

A thirteen-year-old boy, Darius Simmons, was shot and killed while standing in front of his residence. The shooter was the boy’s seventy-three-year-old neighbor, John Spooner. Several days earlier Spooner had reported to the police that guns had been stolen from his residence, and just before the shooting Spooner had confronted Darius on the sidewalk and demanded Darius return his guns. Darius responded that he did not have Spooner’s guns. Spooner then shot Darius, and Darius collapsed after running a few yards. When the police arrived at 9:48 a.m., Darius’s mother, Patricia Larry, who had witnessed the shooting, was standing next to her son. Spooner, who was still at the scene, was arrested. Ms. Larry was placed in the back seat of a police car at approximately 10:14 a.m. Darius was transported to the hospital by medical personnel. The ambulance arrived at the hospital at 10:24 a.m.; Darius was pronounced dead at 11:10 a.m.

Ms. Larry sat in the back seat of the squad car for approximately fifteen to thirty minutes while medical personnel attended to Darius and while he was being transported to the hospital. At about 10:50 a.m., Ms. Larry was placed in the front seat of a detective’s car for an interview and was interviewed for approximately thirty minutes. During this time, Ms. Larry requested to go to the hospital to see her son, but she agreed to complete the interview. At 11:36 a.m. Ms. Larry was transported to the hospital. She was notified of the death of Darius when she arrived there at 11:58 a.m.

The police department and investigators in charge of the investigation were subsequently criticized for unnecessarily keeping Ms. Larry from being with her dying son at the hospital. On one hand, investigators wished to minimize the contact Ms. Larry had with other witnesses so as to avoid contamination of memory and information. On the other hand, a more compassionate response would have been to take the witness to the hospital or even to allow her to accompany her son to the hospital in the ambulance. Departmental policy did not prohibit either of these possibilities. The official review of the investigation concluded the investigators had failed to appreciate the devastating effect of the incident on the victim’s mother and that allowing the witness to have contact with her son at (and on the way to) the hospital would not have unnecessarily jeopardized the investigation.
sort of body language and posture as the witness), such as smiling when the witness smiles; the witness’s language, such as using similar words, phrases, and expressions; and the witness’s paralanguage, such as using a similar rate, volume, and pitch of speech. In addition, to build rapport it is important for the interviewer to provide feedback to the witness that suggests an understanding of what the witness has experienced and that shows concern for the witness. Although the witness and the interviewer may have different immediate goals, emphasis should be placed on identifying common goals and team building. Research shows building rapport leads to more accurate information being reported by witnesses, decreases inaccurate information, and reduces the influence of misinformation, especially in response to open-ended questions.91

Information that comes from witnesses has the potential to be extremely valuable for investigators and prosecutors in proving guilt. As such, proper care and procedures need to be used to help ensure the collection of accurate information.

**MAIN POINTS**

1. An investigative interview refers to any questioning intended to produce information about a crime or regarding a person believed to have committed a crime. They are typically not accusatory in nature and are intended to develop information.

2. Witnesses can be primary or secondary depending on the information they have and provide to the police. Eyewitnesses are primary witnesses. The information provided by secondary witnesses can be as valuable as that provided by primary witnesses.

3. Eyewitnesses may be able to provide information about the MO and other actions of the offender and a description of the offender. They may also be able to identify the offender.

4. Eyewitnesses may be able to identify a perpetrator via the development of a composite picture of the perpetrator, by viewing mug shot books, or through a show-up identification, a photo lineup, or a live lineup.

5. While a composite picture of a suspect may look realistic, it may not be accurate.

6. Viewing mug shot books in an attempt to identify a perpetrator is usually rather unproductive.

7. Show-up identifications are logistically simple but may be quite suggestive to a witness.

8. Photo lineups consist of a photograph of the suspect along with usually five others (fillers). Photo lineups are conducted much more often than live lineups.

9. Live lineups also usually consist of six participants (the suspect and five others). They are conducted in such a way that the participants are unable to see the witness. Suspects have the right to counsel at live lineups, but they cannot refuse to participate.

10. Eyewitness identifications are extremely persuasive in establishing proof but are often among the least reliable types of evidence. The most common factor in wrongful conviction cases is false eyewitness identification.

11. Human memory consists of three phases: encoding, storage, and retrieval. During the memory process, many things may happen to inhibit or distort accurate memory. As such, many factors can influence the accuracy of eyewitness evidence.

12. The procedures used in constructing and conducting a lineup can greatly affect the accuracy of the identification.

13. Hypnosis can be used as a method of stimulating a witness’s memory. However, hypnotized subjects are more susceptible to suggestion and providing inaccurate information. Because of this issue and the associated legal restrictions on such testimony, hypnosis is seldom used in criminal investigations today.

14. Cognitive interviewing is an interviewing approach that encourages concentration and has been shown to be an effective tool in enhancing memory recall. It is substantially different than the traditional or standard interview approach.
15. Regardless of the interview approach used, witnesses should be kept from sharing their observations with each other prior to the interview, interviews should be conducted in places that are free from distractions, and interviewers should build rapport with witnesses.

**IMPORTANT TERMS**

- Cognitive interview, 172
- Confabulation, 170
- Encoding stage, 163
- Eyewitnesses, 155
- Hypnosis, 170
- Investigative interview, 155
- Live lineup, 161
- Modus operandi (MO), 156
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**QUESTIONS FOR DISCUSSION AND REVIEW**

1. What is the difference between a primary and a secondary witness? Is one more useful than the other? Explain.

2. What are the various ways by which eyewitness identifications can be made?

3. What are the advantages and disadvantages of using facial identification software and forensic sketches to create composite pictures of suspects?

4. What is the value of eyewitness identifications in establishing proof?

5. What are the three phases of human memory, and how can factors at each phase affect the retrieval of information from witnesses?

6. What are the recommended procedures for conducting lineups? Why are these procedures important?

7. What is the relative-judgment process, and how can it be guarded against when conducting lineups?

8. What is the role of hypnosis in criminal investigation? What is confabulation? What does the research say about the accuracy of hypnotically elicited testimony?

9. How does the cognitive interviewing approach compare to the standard police interview? What does the research say about the value of the cognitive interview approach?

10. What are the recommendations regarding how and when interviews with witnesses should be conducted?