



# Eyewitness Evidence

## A Guide for Law Enforcement



*research report*

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## Section II. Mug Books and Composites

### A. Preparing Mug Books

**Note:** *“Mug books” (i.e., collections of photos of previously arrested persons) may be used in cases in which a suspect has not yet been determined and other reliable sources have been exhausted. This technique may provide investigative leads, but results should be evaluated with caution.*

**Principle:** Nonsuggestive composition of a mug book may enable the witness to provide a lead in a case in which no suspect has been determined and other reliable sources have been exhausted.

**Policy:** The investigator/mug book preparer shall compose the mug book in such a manner that individual photos are not suggestive.

**Procedure:** In selecting photos to be preserved in a mug book, the preparer should:

1. Group photos by format (e.g., color or black and white; Polaroid, 35mm, or digital; video) to ensure that no photo unduly stands out.
2. Select photos of individuals that are uniform with regard to general physical characteristics (e.g., race, age, sex).
3. Consider grouping photos by specific crime (e.g., sexual assault, gang activity).
4. Ensure that positive identifying information exists for all individuals portrayed.
5. Ensure that photos are reasonably contemporary.
6. Ensure that only one photo of each individual is in the mug book.

## A. Preparing Mug Books

**Summary:** Mug books must be objectively compiled to yield investigative leads that will be admissible in court.

## B. Developing and Using Composite Images

**Note:** *Composite images can be beneficial investigative tools; however, they should not be used as stand-alone evidence and may not rise to the level of probable cause.*

**Principle:** Composites provide a depiction that may be used to develop investigative leads.

**Policy:** The person preparing the composite shall select and employ the composite technique in such a manner that the witness' description is reasonably depicted.

**Procedure:** The person preparing the composite should:

1. Assess the ability of the witness to provide a description of the perpetrator.
2. Select the procedure to be used from those available (e.g., identikit-type, artist, or computer-generated images).
3. Unless part of the procedure, avoid showing the witness any photos immediately prior to development of the composite.
4. Select an environment for conducting the procedure that minimizes distractions.
5. Conduct the procedure with each witness separately.
6. Determine with the witness whether the composite is a reasonable representation of the perpetrator.

**Summary:** The use of composite images can yield investigative leads in cases in which no suspect has been determined. Use of these procedures can facilitate obtaining from the witness a description that will enable the development of a reasonable likeness of the perpetrator.

## C. Instructing the Witness

**Principle:** Instructions to the witness prior to conducting the procedure can facilitate the witness' recollection of the perpetrator.

**Policy:** The investigator/person conducting the procedure shall provide instructions to the witness prior to conducting the procedure.

**Procedure:**

**Mug Book:** The investigator/person conducting the procedure should:

1. Instruct each witness without other persons present.
2. Describe the mug book to the witness only as a "collection of photographs."
3. Instruct the witness that the person who committed the crime may or may not be present in the mug book.
4. Consider suggesting to the witness to think back to the event and his/her frame of mind at the time.
5. Instruct the witness to select a photograph if he/she can and to state how he/she knows the person if he/she can.
6. Assure the witness that regardless of whether he/she makes an identification, the police will continue to investigate the case.
7. Instruct the witness that the procedure requires the investigator to ask the witness to state, in his/her own words, how certain he/she is of any identification.

## C. Instructing the Witness

**Composite:** The investigator/person conducting the procedure should:

1. Instruct each witness without other persons present.
2. Explain the type of composite technique to be used.
3. Explain to the witness how the composite will be used in the investigation.
4. Instruct the witness to think back to the event and his/her frame of mind at the time.

**Summary:** Providing instructions to the witness can improve his/her comfort level and can result in information that may assist the investigation.

## D. Documenting the Procedure

**Principle:** Documentation of the procedure provides an accurate record of the results obtained from the witness.

**Policy:** The person conducting the procedure shall preserve the outcome of the procedure by accurately documenting the type of procedure(s) employed and the results.

**Procedure:** The person conducting the procedure should:

1. Document the procedure employed (e.g., identikit-type, mug book, artist, or computer-generated image) in writing.
2. Document the results of the procedure in writing, including the witness' own words regarding how certain he/she is of any identification.
3. Document items used and preserve composites generated.

**Summary:** Documentation of the procedure and its outcome improves the strength and credibility of the results obtained from the witness and can be an important factor in the investigation and any subsequent court proceedings.

## Section III. Procedures for Interviewing the Witness by the Followup Investigator

### A. Preinterview Preparations and Decisions

**Principle:** Preparing for an interview maximizes the effectiveness of witness participation and interviewer efficiency.

**Policy:** The investigator shall review all available witness and case information and arrange an efficient and effective interview.

**Procedure:** Prior to conducting the interview, the investigator should:

1. Review available information.
2. Plan to conduct the interview as soon as the witness is physically and emotionally capable.
3. Select an environment that minimizes distractions while maintaining the comfort level of the witness.
4. Ensure resources are available (e.g., notepad, tape recorder, camcorder, interview room).
5. Separate the witnesses.
6. Determine the nature of the witness' prior law enforcement contact.

**Summary:** Performing the above preinterview preparations will enable the investigator to elicit a greater amount of accurate information during the interview, which may be critical to the investigation.



## B. Initial (Preinterview) Contact With the Witness

**Principle:** A comfortable witness provides more information.

**Policy:** Investigators shall conduct themselves in a manner conducive to eliciting the most information from the witness.

**Procedure:** On meeting with the witness but prior to beginning the interview, the investigator should:

1. Develop rapport with the witness.
2. Inquire about the nature of the witness' prior law enforcement contact related to the incident.
3. Volunteer no specific information about the suspect or case.

**Summary:** Establishing a cooperative relationship with the witness likely will result in an interview that yields a greater amount of accurate information.

## C. Conducting the Interview

**Principle:** Interview techniques can facilitate witness memory and encourage communication both during and following the interview.

**Policy:** The investigator shall conduct a complete, efficient, and effective interview of the witness and encourage postinterview communication.

**Procedure:** During the interview, the investigator should:

1. Encourage the witness to volunteer information without prompting.
2. Encourage the witness to report all details, even if they seem trivial.

3. Ask open-ended questions (e.g., “What can you tell me about the car?”); augment with closed-ended, specific questions (e.g., “What color was the car?”).
4. Avoid leading questions (e.g., “Was the car red?”).
5. Caution the witness not to guess.
6. Ask the witness to mentally recreate the circumstances of the event (e.g., “Think about your feelings at the time”).
7. Encourage nonverbal communication (e.g., drawings, gestures, objects).
8. Avoid interrupting the witness.
9. Encourage the witness to contact investigators when additional information is recalled.
10. Instruct the witness to avoid discussing details of the incident with other potential witnesses.
11. Encourage the witness to avoid contact with the media or exposure to media accounts concerning the incident.
12. Thank the witness for his/her cooperation.

**Summary:** Information elicited from the witness during the interview may provide investigative leads and other essential facts. The above interview procedures will enable the witness to provide the most accurate, complete description of the event and encourage the witness to report later recollections. Witnesses commonly recall additional information after the interview that may be critical to the investigation.

## D. Recording Witness Recollections

**Principle:** The record of the witness’ statements accurately and completely reflects all information obtained and preserves the integrity of this evidence.

## D. Recording Witness Recollections

**Policy:** The investigator shall provide complete and accurate documentation of all information obtained from the witness.

**Procedure:** During or as soon as reasonably possible after the interview, the investigator should:

1. Document the witness' statements (e.g., audio or video recording, stenographer's documentation, witness' written statement, written summary using witness' own words).
2. Review written documentation; ask the witness if there is anything he/she wishes to change, add, or emphasize.

**Summary:** Complete and accurate documentation of the witness' statement is essential to the integrity and success of the investigation and any subsequent court proceedings.

## E. Assessing the Accuracy of Individual Elements of a Witness' Statement

**Principle:** Point-by-point consideration of a statement may enable judgment on which components of the statement are most accurate. This is necessary because each piece of information recalled by the witness may be remembered independently of other elements.

**Policy:** The investigator shall review the individual elements of the witness' statement to determine the accuracy of each point.

**Procedure:** After conducting the interview, the investigator should:

1. Consider each individual component of the witness' statement separately.

2. Review each element of the witness' statement in the context of the entire statement. Look for inconsistencies within the statement.
3. Review each element of the statement in the context of evidence known to the investigator from other sources (e.g., other witnesses' statements, physical evidence).

**Summary:** Point-by-point consideration of the accuracy of each element of a witness' statement can assist in focusing the investigation. This technique avoids the common misconception that the accuracy of an individual element of a witness' description predicts the accuracy of another element.

## F. Maintaining Contact With the Witness

**Principle:** The witness may remember and provide additional information after the interview has concluded.

**Policy:** The investigator shall maintain open communication to allow the witness to provide additional information.

**Procedure:** During postinterview, followup contact with the witness, the investigator should:

1. Reestablish rapport with the witness.
2. Ask the witness if he/she has recalled any additional information.
3. Follow interviewing and documentation procedures in subsections C, "Conducting the Interview," and D, "Recording Witness Recollections."
4. Provide no information from other sources.

**Summary:** Reestablishing contact and rapport with the witness often leads to recovery of additional information. Maintaining open communication channels with the witness throughout the investigation is critical.

## Section IV. Field Identification Procedure (Showup)

### A. Conducting Showups

**Principle:** When circumstances require the prompt display of a single suspect to a witness, the inherent suggestiveness of the encounter can be minimized through the use of procedural safeguards.

**Policy:** The investigator shall employ procedures that avoid prejudicing the witness.

**Procedure:** When conducting a showup, the investigator should:

1. Determine and document, prior to the showup, a description of the perpetrator.
2. Consider transporting the witness to the location of the detained suspect to limit the legal impact of the suspect's detention.
3. When multiple witnesses are involved:
  - a. Separate witnesses and instruct them to avoid discussing details of the incident with other witnesses.
  - b. If a positive identification is obtained from one witness, consider using other identification procedures (e.g., lineup, photo array) for remaining witnesses.
4. Caution the witness that the person he/she is looking at may or may not be the perpetrator.
5. Obtain and document a statement of certainty for both identifications and nonidentifications.

**Summary:** The use of a showup can provide investigative information at an early stage, but the inherent suggestiveness of a showup requires careful use of procedural safeguards.

## B. Recording Showup Results

**Principle:** The record of the outcome of the field identification procedure accurately and completely reflects the identification results obtained from the witness.

**Policy:** When conducting a showup, the investigator shall preserve the outcome of the procedure by documenting any identification or nonidentification results obtained from the witness.

**Procedure:** When conducting a showup, the investigator should:

1. Document the time and location of the procedure.
2. Record both identification and nonidentification results in writing, including the witness' own words regarding how certain he/she is.

**Summary:** Preparing a complete and accurate record of the outcome of the showup improves the strength and credibility of the identification or nonidentification results obtained from the witness and can be a critical document in the investigation and any subsequent court proceedings.

# Section V. Procedures for Eyewitness Identification of Suspects

## A. Composing Lineups

**Principle:** Fair composition of a lineup enables the witness to provide a more accurate identification or nonidentification.

**Policy:** The investigator shall compose the lineup in such a manner that the suspect does not unduly stand out.

**Procedure:**

**Photo Lineup:** In composing a photo lineup, the investigator should:

1. Include only one suspect in each identification procedure.
2. Select fillers who generally fit the witness' description of the perpetrator. When there is a limited/inadequate description of the perpetrator provided by the witness, or when the description of the perpetrator differs significantly from the appearance of the suspect, fillers should resemble the suspect in significant features.
3. If multiple photos of the suspect are reasonably available to the investigator, select a photo that resembles the suspect description or appearance at the time of the incident.
4. Include a *minimum* of five fillers (nonsuspects) per identification procedure.
5. Consider that complete uniformity of features is not required. Avoid using fillers who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
6. Create a consistent appearance between the suspect and fillers with respect to any unique or unusual feature (e.g., scars, tattoos)

## A. Composing Lineups

used to describe the perpetrator by artificially adding or concealing that feature.

7. Consider placing suspects in different positions in each lineup, both across cases and with multiple witnesses in the same case. Position the suspect randomly in the lineup.
8. When showing a new suspect, avoid reusing fillers in lineups shown to the same witness.
9. Ensure that no writings or information concerning previous arrest(s) will be visible to the witness.
10. View the spread, once completed, to ensure that the suspect does not unduly stand out.
11. Preserve the presentation order of the photo lineup. In addition, the photos themselves should be preserved in their original condition.

**Live Lineup:** In composing a live lineup, the investigator should:

1. Include only one suspect in each identification procedure.
2. Select fillers who generally fit the witness' description of the perpetrator. When there is a limited/inadequate description of the perpetrator provided by the witness, or when the description of the perpetrator differs significantly from the appearance of the suspect, fillers should resemble the suspect in significant features.
3. Consider placing suspects in different positions in each lineup, both across cases and with multiple witnesses in the same case. Position the suspect randomly unless, where local practice allows, the suspect or the suspect's attorney requests a particular position.
4. Include a *minimum* of four fillers (nonsuspects) per identification procedure.
5. When showing a new suspect, avoid reusing fillers in lineups shown to the same witness.

6. Consider that complete uniformity of features is not required. Avoid using fillers who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
7. Create a consistent appearance between the suspect and fillers with respect to any unique or unusual feature (e.g., scars, tattoos) used to describe the perpetrator by artificially adding or concealing that feature.

**Summary:** The above procedures will result in a photo or live lineup in which the suspect does not unduly stand out. An identification obtained through a lineup composed in this manner may have stronger evidentiary value than one obtained without these procedures.

## B. Instructing the Witness Prior to Viewing a Lineup

**Principle:** Instructions given to the witness prior to viewing a lineup can facilitate an identification or nonidentification based on his/her own memory.

**Policy:** Prior to presenting a lineup, the investigator shall provide instructions to the witness to ensure the witness understands that the purpose of the identification procedure is to exculpate the innocent as well as to identify the actual perpetrator.

**Procedure:**

***Photo Lineup:*** Prior to presenting a photo lineup, the investigator should:

1. Instruct the witness that he/she will be asked to view a set of photographs.

## B. Instructing the Witness Prior to Viewing a Lineup

2. Instruct the witness that it is just as important to clear innocent persons from suspicion as to identify guilty parties.
3. Instruct the witness that individuals depicted in lineup photos may not appear exactly as they did on the date of the incident because features such as head and facial hair are subject to change.
4. Instruct the witness that the person who committed the crime may or may not be in the set of photographs being presented.
5. Assure the witness that regardless of whether an identification is made, the police will continue to investigate the incident.
6. Instruct the witness that the procedure requires the investigator to ask the witness to state, in his/her own words, how certain he/she is of any identification.

***Live Lineup:*** Prior to presenting a live lineup, the investigator should:

1. Instruct the witness that he/she will be asked to view a group of individuals.
2. Instruct the witness that it is just as important to clear innocent persons from suspicion as to identify guilty parties.
3. Instruct the witness that individuals present in the lineup may not appear exactly as they did on the date of the incident because features such as head and facial hair are subject to change.
4. Instruct the witness that the person who committed the crime may or may not be present in the group of individuals.
5. Assure the witness that regardless of whether an identification is made, the police will continue to investigate the incident.
6. Instruct the witness that the procedure requires the investigator to ask the witness to state, in his/her own words, how certain he/she is of any identification.

**Summary:** Instructions provided to the witness prior to presentation of a lineup will likely improve the accuracy and reliability of any identification obtained from the witness and can facilitate the elimination of innocent parties from the investigation.

## C. Conducting the Identification Procedure

**Principle:** The identification procedure should be conducted in a manner that promotes the reliability, fairness, and objectivity of the witness' identification.

**Policy:** The investigator shall conduct the lineup in a manner conducive to obtaining accurate identification or nonidentification decisions.

### **Procedure:**

#### *Simultaneous*

**Photo Lineup:** When presenting a simultaneous photo lineup, the investigator should:

1. Provide viewing instructions to the witness as outlined in subsection B, "Instructing the Witness Prior to Viewing a Lineup."
2. Confirm that the witness understands the nature of the lineup procedure.
3. Avoid saying anything to the witness that may influence the witness' selection.
4. If an identification is made, avoid reporting to the witness any information regarding the individual he/she has selected prior to obtaining the witness' statement of certainty.
5. Record any identification results and witness' statement of certainty as outlined in subsection D, "Recording Identification Results."

### C. Conducting the Identification Procedure

6. Document in writing the photo lineup procedures, including:
  - a. Identification information and sources of all photos used.
  - b. Names of all persons present at the photo lineup.
  - c. Date and time of the identification procedure.
7. Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.

#### ***Sequential***

***Photo Lineup:*** When presenting a sequential photo lineup, the investigator should:

1. Provide viewing instructions to the witness as outlined in subsection B, “Instructing the Witness Prior to Viewing a Lineup.”
2. Provide the following *additional* viewing instructions to the witness:
  - a. Individual photographs will be viewed *one at a time*.
  - b. The photos are in random order.
  - c. Take as much time as needed in making a decision about each photo before moving to the next one.
  - d. All photos will be shown, even if an identification is made; ***or*** the procedure will be stopped at the point of an identification (consistent with jurisdictional/departmental procedures).
3. Confirm that the witness understands the nature of the sequential procedure.
4. Present each photo to the witness separately, in a previously determined order, removing those previously shown.
5. Avoid saying anything to the witness that may influence the witness’ selection.

6. If an identification is made, avoid reporting to the witness any information regarding the individual he/she has selected prior to obtaining the witness' statement of certainty.
7. Record any identification results and witness' statement of certainty as outlined in subsection D, "Recording Identification Results."
8. Document in writing the photo lineup procedures, including:
  - a. Identification information and sources of all photos used.
  - b. Names of all persons present at the photo lineup.
  - c. Date and time of the identification procedure.
9. Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.

***Simultaneous***

***Live Lineup:*** When presenting a simultaneous live lineup, the investigator/lineup administrator should:

1. Provide viewing instructions to the witness as outlined in subsection B, "Instructing the Witness Prior to Viewing a Lineup."
2. Instruct all those present at the lineup not to suggest in any way the position or identity of the suspect in the lineup.
3. Ensure that any identification actions (e.g., speaking, moving) are performed by all members of the lineup.
4. Avoid saying anything to the witness that may influence the witness' selection.
5. If an identification is made, avoid reporting to the witness any information regarding the individual he/she has selected prior to obtaining the witness' statement of certainty.

### C. Conducting the Identification Procedure

6. Record any identification results and witness' statement of certainty as outlined in subsection D, "Recording Identification Results."
7. Document the lineup in writing, including:
  - a. Identification information of lineup participants.
  - b. Names of all persons present at the lineup.
  - c. Date and time the identification procedure was conducted.
8. Document the lineup by photo or video. This documentation should be of a quality that represents the lineup clearly and fairly.
9. Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.

#### *Sequential*

**Live Lineup:** When presenting a sequential live lineup, the lineup administrator/investigator should:

1. Provide viewing instructions to the witness as outlined in subsection B, "Instructing the Witness Prior to Viewing a Lineup."
2. Provide the following *additional* viewing instructions to the witness:
  - a. Individuals will be viewed *one at a time*.
  - b. The individuals will be presented in random order.
  - c. Take as much time as needed in making a decision about each individual before moving to the next one.
  - d. If the person who committed the crime is present, identify him/her.

- e. All individuals will be presented, even if an identification is made; *or* the procedure will be stopped at the point of an identification (consistent with jurisdictional/departmental procedures).
3. Begin with all lineup participants out of the view of the witness.
4. Instruct all those present at the lineup not to suggest in any way the position or identity of the suspect in the lineup.
5. Present each individual to the witness separately, in a previously determined order, removing those previously shown.
6. Ensure that any identification actions (e.g., speaking, moving) are performed by all members of the lineup.
7. Avoid saying anything to the witness that may influence the witness' selection.
8. If an identification is made, avoid reporting to the witness any information regarding the individual he/she has selected prior to obtaining the witness' statement of certainty.
9. Record any identification results and witness' statement of certainty as outlined in subsection D, "Recording Identification Results."
10. Document the lineup procedures and content in writing, including:
  - a. Identification information of lineup participants.
  - b. Names of all persons present at the lineup.
  - c. Date and time the identification procedure was conducted.
11. Document the lineup by photo or video. This documentation should be of a quality that represents the lineup clearly and fairly. Photo documentation can be of either the group or each individual.
12. Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.

## C. Conducting the Identification Procedure

**Summary:** The manner in which an identification procedure is conducted can affect the reliability, fairness, and objectivity of the identification. Use of the above procedures can minimize the effect of external influences on a witness' memory.

## D. Recording Identification Results

**Principle:** The record of the outcome of the identification procedure accurately and completely reflects the identification results obtained from the witness.

**Policy:** When conducting an identification procedure, the investigator shall preserve the outcome of the procedure by documenting any identification or nonidentification results obtained from the witness.

**Procedure:** When conducting an identification procedure, the investigator should:

1. Record both identification and nonidentification results in writing, including the witness' own words regarding how sure he/she is.
2. Ensure results are signed and dated by the witness.
3. Ensure that no materials indicating previous identification results are visible to the witness.
4. Ensure that the witness does not write on or mark any materials that will be used in other identification procedures.

**Summary:** Preparing a complete and accurate record of the outcome of the identification procedure improves the strength and credibility of the identification or nonidentification results obtained from the witness. This record can be a critical document in the investigation and any subsequent court proceedings.

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# About the National Institute of Justice

The National Institute of Justice (NIJ), a component of the Office of Justice Programs, is the research agency of the U.S. Department of Justice. Created by the Omnibus Crime Control and Safe Streets Act of 1968, as amended, NIJ is authorized to support research, evaluation, and demonstration programs, development of technology, and both national and international information dissemination. Specific mandates of the Act direct NIJ to:

- ◆ Sponsor special projects, and research and development programs, that will improve and strengthen the criminal justice system and reduce or prevent crime.
- ◆ Conduct national demonstration projects that employ innovative or promising approaches for improving criminal justice.
- ◆ Develop new technologies to fight crime and improve criminal justice.
- ◆ Evaluate the effectiveness of criminal justice programs and identify programs that promise to be successful if continued or repeated.
- ◆ Recommend actions that can be taken by Federal, State, and local governments as well as by private organizations to improve criminal justice.
- ◆ Carry out research on criminal behavior.
- ◆ Develop new methods of crime prevention and reduction of crime and delinquency.

In recent years, NIJ has greatly expanded its initiatives, the result of the Violent Crime Control and Law Enforcement Act of 1994 (the Crime Act), partnerships with other Federal agencies and private foundations, advances in technology, and a new international focus. Some examples of these new initiatives:

- ◆ New research and evaluation is exploring key issues in community policing, violence against women, sentencing reforms, and specialized courts such as drug courts.
- ◆ Dual-use technologies are being developed to support national defense and local law enforcement needs.
- ◆ Four regional National Law Enforcement and Corrections Technology Centers and a Border Research and Technology Center have joined the National Center in Rockville, Maryland.
- ◆ The causes, treatment, and prevention of violence against women and violence within the family are being investigated in cooperation with several agencies of the U.S. Department of Health and Human Services.
- ◆ NIJ's links with the international community are being strengthened through membership in the United Nations network of criminological institutes; participation in developing the U.N. Criminal Justice Information Network; initiation of UNOJUST (U.N. Online Justice Clearinghouse), which electronically links the institutes to the U.N. network; and establishment of an NIJ International Center.
- ◆ The NIJ-administered criminal justice information clearinghouse, the world's largest, has improved its online capability.
- ◆ The Institute's Drug Use Forecasting (DUF) program has been expanded and enhanced. Renamed ADAM (Arrestee Drug Abuse Monitoring), the program will increase the number of drug-testing sites, and its role as a "platform" for studying drug-related crime will grow.
- ◆ NIJ's new Crime Mapping Research Center will provide training in computer mapping technology, collect and archive geocoded crime data, and develop analytic software.
- ◆ The Institute's program of intramural research has been expanded and enhanced.

The Institute Director, who is appointed by the President and confirmed by the Senate, establishes the Institute's objectives, guided by the priorities of the Office of Justice Programs, the Department of Justice, and the needs of the criminal justice field. The Institute actively solicits the views of criminal justice professionals and researchers in the continuing search for answers that inform public policymaking in crime and justice.

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