



FREQUENTLY ASKED QUESTIONS

WI Model Policy & Recommended Procedures on Eyewitness Identification (Comprehensive Review and Analysis of Best Practices)

1. Question:

For photo arrays, the model lists two methods, one involving an independent administrator and one involving the use of folders. Are these two methods similar?

Answer:

Yes, they simply represent two different alternatives for achieving the double-blind goal. A double blind administration seeks to avoid unintentional cues, or any possibility for cues, from the administrator. In the double blind procedure the person displaying the photos does not know which photo depicts the suspect and the witness is told that the administrator does not know which photo, *if any*, is the suspect.

2. Question:

For all eyewitness identification procedures, the Model recommends assessing a witness's confidence or certainty immediately after an identification. In what terms should the witness express his/her confidence? Should a victim or witness be coached to answer in a percentage number or on a scale of 1 to 10?

Answer:

The phrasing used in the model is meant to encourage witnesses to express their level of confidence in whatever words they choose. The model anticipates that witnesses will choose different ways of measuring and expressing confidence. The main goal at this stage is to record the witness's own words at the time of the lineup, before any feedback from officers or others.

3. Question:

In several places, the model recommends that law enforcement electronically record identification procedures, preserve photo arrays in their original form, or create and preserve photo documentation of live lineup subjects. Why does the model give no guidance on precisely how to preserve and retain these kinds of evidence?

Answer:

Issues of evidence retention and preservation are beyond the scope of this project. For guidance on these matters, local departments may consult their own agency guidelines as well as other Department of Justice publications, cited in the text of the comprehensive model analysis, that address these issues directly.

4. Question:

The model recommends a minimum numbers of fillers (non-suspects) for photo arrays and live lineups. Where do these minimum numbers come from?

Answer:

The numbers selected comply with the minimums set forth by the United States Department of Justice's, *Eyewitness Evidence: A Guide for Law Enforcement*, published in 1999. Research suggests that using more fillers, up to a point, may increase the reliability of the procedure.

5. Question:

In the sections on photo arrays, the model recommends that agencies use blank photos. What are blank photos?

Answer:

Blank photos are photos that the person administering the array places at the end of the pile with the other photos but *does not show to the witness*. They are included in the pile for the sole purpose of preventing the witness from knowing when he/she is viewing the last photo. This helps prevent eyewitnesses from anticipating the end of the photos and is aimed at reducing any perception that they need to make a choice simply because they are reaching the end of the array. For the blank photos, officers may use any photo (including photos that would not be appropriate fillers) other than the suspect's photo.

6. Question:

The model recommends that, prior to administering an eyewitness identification procedure, administrators give the witness a copy of the instruction sheet, read the instruction aloud, and then ask the witness to sign the instruction. Why should eyewitnesses be asked to sign?

Answer:

An eyewitness's signature on the instruction sheet bolsters the reliability of the procedure for future court proceedings. A signature verifies that the witness was properly instructed, thereby eliminating an opportunity for challenge or criticism of the identification procedure. This is a precautionary instruction intended to avoid any self-imposed pressure for the witness to choose. Two key elements in this part of the process include first telling the witness the suspect may or may not be in the lineup and secondly ensuring that the witness does not know how many persons/photos are in the sequence.

7. Question:

The model does not address the right to counsel at eyewitness identification procedures. Why not?

Answer:

The right to counsel is beyond the scope of this document. The minimum requirements under the Constitution are set forth by the courts, and local departments are free to meet or surpass those requirements as they see fit. There is no right to counsel for any pre-trial identification procedure conducted **before** formal charges are issued in a court of law.

8. Question:

Some agencies will have eyewitnesses view photo arrays on a computer screen, and those arrays may be re-produced in court by means of a printout or in-court computer screen. How can those agencies address the possibility that the defense will claim the array presented in court looks different than the one the witness viewed originally?

Answer:

If the array presented in court fairly represents the one the witness viewed, the witness and the officer who administered the array will be able to testify to that fact. Their testimony is what qualifies any visual representation and should be sufficient to eliminate any possibility that a challenge on this basis will impact the outcome of the case.

9. Question:

The model's footnotes cite a number of documents. Are these documents available to law enforcement?

Answer: The documents are available...

* To access the document cited in footnote 2, go to:

<http://www.psychology.iastate.edu/faculty/gwells/whitepaperpdf.pdf>

* To access the document cited in footnote 3, go to:

http://www.psychology.iastate.edu/faculty/gwells/annual_review_2003.pdf

* To access the document cited in footnote 14, go to:

http://www.psychology.iastate.edu/faculty/gwells/Wells_articles_pdf/Good,_You_Indetified_the_Suspect.pdf

* To access the document cited in footnote 15, go to:

<http://www.psychology.iastate.edu/faculty/gwells/Bradfield,Wells,Olson.pdf>

* To access the documents cited in footnote 23:

For *Eyewitness Evidence: A Trainer's Manual for Law Enforcement*, 2003, go to: <http://www.ojp.gov/nij/eyewitness/188678.html>.

For *Eyewitness Evidence: A Guide for Law Enforcement*, 1999, go to: <http://www.ncjrs.org/pdffiles1/nij/178240.pdf>.

*If you do not have access to the internet, or if you would like a copy of the documents cited in footnotes 16, 19, and 21, please contact: Byron Lichstein at the University of Wisconsin Law School, at either (608) 265-2741 or bclichstein@wisc.edu, and he will purchase a copy of the articles for you.

10. Question:

What if the victim/witness does not pick a suspect during the initial viewing? Should he/she be allowed to view the photos again and if so, is there any preferred way of doing so?

Answer:

The sequential format seeks to avoid relative judgment. The witness is shown photos one at a time and any comments are documented. The witness is not allowed to “go back,” but may view all the photos in the same order again. The witness is not allowed to put photos next to one another. The witness is always instructed that the full sequence will be completed, even if they make an identification part way through. If the array is viewed more than once, complete a detailed report of what occurs. This principle applies to both photo arrays and live lineups.

11. Question:

Does the model and guidelines apply to both adult and juvenile cases?

Answer:

Yes, sequential procedures, double blind principles, etc. all apply to the identification process the same regardless of age.

12. Question:

Is it ever appropriate to have someone use a school yearbook to try to identify a suspect?

Answer:

Yes, much like a “mug book,” yearbooks continue to be an appropriate method for having witnesses view photographs. This is generally a last resort reserved for incidents when the suspect is unknown or no other photographic image is available. Witnesses should also be instructed in a similar fashion to other photo presentations. You might consider referring to “mug books” more appropriately as “collections of photographs.”

13. Question:

Can suspects be required to speak, make gestures, assume a pose, or wear a particular item of clothing that is in police custody?

Answer:

Yes. However, if a suspect is instructed, to utter specific words or phrases, make gestures, assumes pose or wear any item, then all the participants shall be instructed to follow the same instructions. The instruction to wear any item of clothing should be based on the witness's description as wearing a distinctive item at the time of the event.

14. Question:

One often-discussed issue related to eyewitness identification is whether cross-racial identifications are less reliable than same-race identifications. Is this true? And, why doesn't the model address this issue?

Answer:

There is scientific evidence that cross-racial identifications may be less reliable than same-race identifications. While law enforcement agencies should be aware of this, the model doesn't address the issue because, unlike the challenges of unintentional suggestion and the relative judgment process, any unreliability of cross-racial identifications can't really be addressed through specific recommendations for law enforcement practices. For that reason, the issue of cross-racial identifications is not addressed in this project at this time.

15. Question:

What should an administrator do if an eyewitness in a photo array or lineup either asks to see two subjects side-by-side or asks to see the entire array or lineup before answering whether a particular subject is the perpetrator?

Answer:

Both of these scenarios suggest the witness is engaging in a relative judgment process, comparing various photos or subjects to each other and deciding which one looks the most like the perpetrator. This Model is designed to discourage relative judgments and encourage absolute judgments. Therefore, administrators should discourage witnesses from deviating from the Model by explaining that the identification procedure has a specific format that the administrator is required to follow. If the witness insists, the administrator may do as the witness asks, provided that deviation from the Model is documented.

16. Question:

How long after a crime can you conduct a show-up? Is it appropriate to conduct a show-up 2 hours after the crime? 4 hours? 8 hours?

Answer:

The answer to this type of question relies upon a factual examination of many case-specific considerations, too many to allow for any single bright line rule. The delicate balance between many factors requires you to carefully consider both time and space. How long after the incident at issue? How far away from the original scene do we find ourselves? Whatever other factors bear on choosing to conduct a show-up, proximity in time is one very important factor. As that proximity disappears, the justification for conducting a show-up procedure decreases. If the time lapse is minutes, a show-up is probably appropriate; if the time lapse is hours, a show-up is perhaps appropriate; but, if the time lapse is a day or more, a show-up is not an appropriate identification technique.

