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Eyewitness Identification Best Practices

Since 1990, there have been hundreds of exonerations in the United States - 159 convicted persons benefited from the emergence of DNA science alone. DNA evidence has improved to the point that we now rely on its persuasiveness. Police investigatory work represents the very foundation upon which our criminal justice system stands. Increasing awareness of wrongful convictions comes to light in highly publicized post-conviction exonerations after some very long prison terms. The most significant contributor to wrongful convictions is widely identified as eyewitness fallibility and that drives the Department's decision to move forward on this important issue.

In most criminal cases, the police seek the truth while dealing with lying, exaggeration, obfuscation and/or well-intentioned but mistaken victims and witnesses. "Hot-button" issues such as these cry out for a quick fix; perhaps some quick fix can craft a single decisive answer to this complex challenge. Law enforcement officials recognize that a meaningful and effective response to crime requires sound practices that must be applied in a myriad of fluid and dynamic situations. A one-size-fits-all approach is not the answer, and may well cause more problems than it was intended to resolve.

Wisconsin has some unique advantages in addressing this kind of challenge. One such opportunity is "The Wisconsin Idea," voiced by former University of Wisconsin President Charles Van Hise, who described a partnering process between this state and the university as "the beneficent influence of the university available to every home in the state." In addition, the Department of Justice can respond to issues quickly and efficiently. Under my direction, the Training and Standards Bureau has developed instruction and supporting materials that will restore confidence in the criminal justice system by proactively employing best practices from around the globe to avoid wrongful convictions of the innocent.

In partnership with the UW Law School and criminal justice practitioners from around the state, I have developed a model policy supported by guidelines contained in model procedures that are now available. These recommendations do not presume any impropriety on the part of the police, but rather seek to do the right thing in the best way we know how. They are presented in a form that criminal justice agencies can adapt to meet their individual needs based upon local circumstances and concerns.

The model policy & procedures address causes of eyewitness error in a number of ways, but most prominently by recommending the following:

- 1) Utilize non-suspect fillers chosen to minimize any suggestiveness that might point toward the suspect;
- 2) Utilize a 'double blind' procedure, in which the administrator is not in a position to unintentionally influence the witness's selection;
- 3) Give eyewitnesses an instruction that the real perpetrator may or may not be present and that the administrator does not know which person is the suspect;
- 4) Present the suspect and the fillers sequentially (one at a time) rather than simultaneously (all at once). This discourages relative judgment and encourages absolute judgments of each person presented, because eyewitnesses are unable to see the subjects all at once and are unable to know when they have seen the last subject;
- 5) Assess eyewitness confidence immediately after identification;
- 6) Avoid multiple identification procedures in which the same witness views the same suspect more than once.

I invite you to learn more by reviewing eyewitness identification model policy and guidelines that are available on this website.