

MUG SHOTS

One of the witnesses has testified that [e.g. the police showed the witness a photo of the defendant] . **If you accept that testimony, you are not to draw any inference against the defendant because the police had his (her) photograph.**

Police departments collect pictures of many people from many different sources and for many different reasons. You are not to speculate what the reason was in this case. The fact that the police may have had the defendant's picture does not mean that the defendant committed this or any other crime.

Commonwealth v. Tuitt, 393 Mass. 801, 808-809, 473 N.E.2d 1103, 1109 (1985); *Commonwealth v. Blaney*, 387 Mass. 628, 634-640 & n.7, 442 N.E.2d 389, 394-396 & n.7 (1982); *Commonwealth v. Lockley*, 381 Mass. 156, 165-166, 408 N.E.2d 834, 841 (1980); *Commonwealth v. Johnson*, 27 Mass. App. Ct. 746, 752-753, 543 N.E.2d 22, 25-26 (1989).

Some phrases in the model instruction are based on *Manual of Jury Instructions for the Ninth Circuit* § 2.09 (1985 ed.). *Commonwealth v. Pullum*, 22 Mass. App. Ct. 485, 490, 494 N.E.2d 1355, 1359 (1986), approved additional language that "the police . . . may obtain pictures of people . . . who were arrested, and later found not guilty; of people who have applied for identification cards, of people who have applied for hackney licenses, and of people who have applied for a gun permit."

Prosecutors are expected to avoid references in testimony to the sources of such photographs. *Commonwealth v. Perez*, 405 Mass. 339, 344, 540 N.E.2d 681, 684 (1989). Whenever possible, it is best to leave the jury with the impression that such photographs were taken after the defendant's arrest on the current charges. *Commonwealth v. Banks*, 27 Mass. App. Ct. 1193, 543 N.E.2d 433 (1989). For the procedures required to sanitize mug shots, see *Jury Trial Manual for Criminal Offenses Tried in the District Court* § 2.48.