

Eyewitness Identification Task Force
Wednesday, September 21, 2011

Minutes

Attendees

Members:

Justice David Borden, Senator Eric Coleman, Representative Gerald Fox III, Representative John Hetherington Dr. David Cameron, Attorney Michelle Cruz, Attorney Deborah DelPrete Sullivan, Attorney Robert Farr, Attorney Karen Goodrow, Ms. LaReese Harvey, Chief State's Attorney Kevin Kane, Stan Konesky, Lt. Regina Rush-Kittle, Chief Duane Lovello, Dean Bradley Saxton

Staff:

Ms. Deborah Blanchard, Dr. Ron Schack, Mr. Alex Tsarkov

Introductions

Senator Eric Coleman, Senate Co-Chair of the Judiciary Committee, welcomed Task Force members to the first meeting and emphasized the importance of the Task Force's work in the interest of improving the quality of justice in Connecticut. He stated that there are examples of wrongful convictions and the Task Force's mandate is to help insure that procedures for eyewitness identification are as reliable as possible. Senator Coleman recommended the appointment of retired Justice David Borden as a candidate for newly-Chair of the Task Force, citing his significant knowledge of the issue.

Representative Gerald Fox III, House Co-Chair of the Judiciary Committee, citing the law enacted in the 2011 session (PA11-252) of the General Assembly for the Task Force's establishment and also thanked the broad range of interests represented on the Task Force, including members of the law enforcement, judiciary, defense bar, and prosecutors communities for their interest and participation. Representative Fox noted that the issue is not unique to Connecticut, concurred with Senator Coleman regarding the importance of the Task Force's charge and the nomination of Justice David Borden as Chair.

Senator Coleman thanked all in advance for the work to be done and noted the newly-established Task Force website, <http://www.cga.ct.gov/jud/eyewitness/taskforce.asp>, Senator Coleman noted that if any members have information that should be shared on the website, to let staff know.

Selection of Chair

Senator Coleman opened the floor for nominations for Chair of the Task Force. Representative Fox nominated Justice Borden. The nomination was seconded by Bob Farr and the motion was passed unanimously by voice vote.

Background

Justice Borden provided an overview of the issues facing eyewitness identification:

Double Blind

In 1977, the U.S. Supreme Court addressed eyewitness identification in the case of *Manson v. Braithwaite*. Since then, experimental psychologists and others have conducted many experiments and uncovered important findings. One of the most important findings is that, the process of accurate witness identification may be through the double blind method; meaning that the person administering the photo array should not know the identification of the suspect. Section 1 of the Public Act 11-252 requires the use of double-blind administration where practical. With the advances of computer programs and other technologies, the use of double-blind will become increasingly easy to administer.

Simultaneous vs. Sequential Methods of Identification

When an eyewitness identification procedure is conducted, a photograph of the suspect as well as photographs of others person that generally match the description of the suspect (fillers) are shown together to the eyewitness. Some research has shown that the sequential method significantly reduces the number of misidentifications. The question of whether simultaneous vs. sequential methods are more accurate continues to be raised, as until very recently there were a lack of field studies.

Dr. Gary Wells, Professor of Psychology at Iowa State University, served as lead researcher on a study released by the American Judicature Society in September 2011. The study questions the reliability of eyewitness identifications under certain circumstances. The study shows that the percentage of misidentification drops dramatically when sequential identification is used, and did not show a parallel decrease in accurate identification of the suspect. Justice Borden noted that this new study should be reviewed by Task Force members.

Discussion on Focus Areas for Task Force and Timeline

Justice Borden noted that the report of the Task Force has to be submitted no later than April 1, 2012. Attorney Farr questioned the late submission, expressing concern that the date may be too late to introduce legislation during the 2012 legislative session. Representative Fox responded that nothing would preclude the Task Force from introducing its findings earlier or, if this was not possible, holding off legislative proposals until the following year. Attorney Farr said that an extension might be appropriate.

Dr. Cameron remarked about the problem with the double blind process given the small size of some police departments and the need to examine any best practices that could help with this issue. Justice Borden noted that this question fell within the scope of the Task Force, but suggested the sequential vs. simultaneous identification process be the initial area to be addressed.

Chief State's Attorney Kane said the Task Force should examine all avenues to reduce errors, including the use of technology as well as examine the other practical issues as soon as possible. In particular, Attorney Kane underscored the importance of examining how identifications are used. For example, the police need to know who was there, who saw it, who to ask. To do so, they may show a photograph of somebody. Sometimes this approach may lead to the person being identified becoming a suspect which, he noted, creates complications. The ability of the police to cover an objective, impartial, and prompt investigation is important. Attorney Steele recalled the Northampton Police uses a "folder method", which she noted is inexpensive, easy-to-use and does not require investment in a lot of technology.

Justice Borden stated that the Task Force could learn a great deal by bringing in people who have had some experience in this area. Dean Saxton noted the short timeframe of the Task Force and asked what process and kinds of information was most important to obtain. Justice Borden opened the question to Task Force members for discussion. Justice Borden stated his vision was to review the available research and to find funds needed to bring in researchers such as Professor Wells and police and prosecutors with experience and expertise.

Attorney Goodrow suggested that it may be helpful for the Task Force to obtain transcript from the State v. Henderson case. The transcripts could be reviewed and summarized for Task Force members, as a way of avoiding the expense of having to bring in too many experts. Justice Borden said that the Special Master in the Henderson case brought in a

number of scientists on both sides of the issue and submitted a report to the New Jersey Supreme Court. The Court adopted many of the findings. Justice Borden agreed with Attorney Goodrow and asked if both she and Dean Saxton could take up the charge. Attorney Steele also offered to provide additional references and reports.

Police Chief Duane Lovello noted that the Darien Police Department has been using the double-blind sequential method. State Victim Advocate Michelle Cruz indicated she used to work in the North Hampton area and would provide contacts and additional information. Justice Borden indicated that any other suggestions be e-mailed to him.

Dean Saxton asked Chief State's Attorney Kane where additional resources on law enforcement community concerns could be found. Attorney Kane said the information was easily obtainable and that Task Force members needed to be cognizant of them if/when legislation is drafted. He noted that there have been some significant cases where, if double blind was required, it would have been much harder to investigate. Justice Borden noted that it would not be hard to put language in any legislation drafted that would allow for exceptions.

Attorney Farr stated that there were a couple of items that have not been raised, for example, the "show up" issue. Also, the Henderson case talks about the dynamics of science and, while the Task Force members will be working off the most recent study, they need to be flexible enough to take advantage of the evolving and improving science. He questioned how police departments assemble the packages where comparison pictures are obtained and questioned whether facial recognition software should be discussed.

Lt. Stan Konesky, retired Training Officer of the Connecticut Police Academy, suggested that once the Task Force puts together model policy and procedures, the model should be tested or piloted by local police departments so implementation issues can be identified and the process is fair, equitable and practical. Also, it was noted that proper training needs to be conducted regarding any changes, both for new recruits as well as current officers.

Attorney Steele raised a question regarding fillers. The DOJ guide of 1999 stated that the filler should match the description given by the witness. She noted that any process or software being considered is using the criteria that science identifies as sound and appropriate.

Dr. Cameron raised question as to whether expert testimony and the judge's charge to the jury were within the scope of the Task Force. Justice Borden replied that he felt the scope scope could these items.

Ms. Harvey asked how baseline information on misidentification could be obtained. Justice Borden suggested that Attorney Goodrow, of the Connecticut Innocence Project, could provide information from the Innocence Project on the numbers of persons who have been misidentified. Attorney Goodrow stated that the national figure for exoneration of convicted people was 273 and growing. Of those, more than 75% were people who were absolutely identified by the witness. These are all DNA exonerations. If one were to extrapolate from this figure, she stated the problem was a serious one.

Attorney Farr noted that there was a statistic in the New Jersey case and asked whether there was a way to obtain data regarding the number of trials where eyewitness identification was an issue. Attorney Goodrow suggested that the Task Force might be able to get that by asking the heads of the JDs to estimate the number for the past five years.

Dean Saxton noted that there must be cases where the witness picks a “filler” and questioned whether the number was tracked. Dr. Schack suggested conducting a survey of police departments to address a number of the questions being raised. Attorney Cruz suggested obtaining current policies from each police department.

It was noted that a model policy had been developed which was designed to meet statutory requirements and if necessary, police departments could adapt the policy to meet their individual organizations.

Justice Borden stated that the Task Force does not have a state appropriation. He noted that the Task Force would not need a lot of funds to conduct its work. He said that to-date a \$1000 donation was promised by Judge Robert Satter through his foundation. He thought that if the Task Force could collect between \$10-15,000, it would be sufficient. He also mentioned that the CT Bar Foundation has agreed to host and fund a day-long colloquium for the Task Force. Justice Borden asked that if any members had ideas for funding to send them along to him.

Chief State’s Attorney Kane requested that a quick report on whether there are problems in Section 1 of the legislation would be helpful and Attorney DelPrete Sullivan asked whether it would also be helpful to identify a person who has a great base of knowledge on this section. Justice Borden noted that until the Task Force has obtained funding, it may be difficult to

Dean Saxton noted that the survey was an important component and, if the Task Force agreed, it should become a part of the Task Force’s work.

Justice Borden suggested the morning of Wednesday, October 19th as the next meeting date for the Task Force. With no further business to discuss, the Task Force adjourned at 12:30 p.m.