

Eyewitness Identification Task Force
Thursday, January 12, 2012
Minutes

Attendees

Members:

Justice David Borden, Representative Gerald Fox III, Representative John Hetherington, Senator John Kissel, Dr. David Cameron, Attorney Richard Colangelo, Attorney Michelle Cruz, Attorney Deborah DelPrete Sullivan, Attorney Robert Farr, Executive Director Thomas Flaherty, Attorney Karen Goodrow, LaReese Harvey, Chief State's Attorney Kevin Kane, Chief Duane Lovello, Lt. Regina Rush-Kittle, Dean Bradley Saxton, Attorney Lisa Steele

Staff:

Ms. Deborah Blanchard, Ms. Sherry Haller, Mr. Alex Tsarkov

Opening Remarks

Justice Borden called the meeting to order at approximately 10:05 a.m. He noted that planning efforts were underway for an eyewitness identification symposium to be held on March 16 at Quinnipiac University. Justice Borden thanked the Connecticut Bar and Satter Foundations as well as the University for sponsoring the event. He also stated that efforts are underway to invite Jennifer Thompson- Cannino, co- author of *Picking Cotton: A Memoir of Injustice and Redemption* to serve as keynote. Justice Borden described the 1984 rape of Jennifer Thompson-Cannino and the eventual conviction the identified assailant, Ronald Cotton, being overturned by DNA, despite what, at the time, was believed to be a clear identification by the victim.

Review of Minutes

Justice Borden noted that the draft minutes of the previous meeting were lengthy and would be reviewed at the next meeting. He asked Task Force members to forward any suggestions for revisions to him before the next meeting.

Discussion of Draft Report

Justice Borden stated that Task Force members had worked on the draft and then welcomed any suggestions. He also noted that draft legislation with LCO Attorney Rick Taff was being drafted and patterned after the draft recommendations in the Task Force Report. Justice Borden stated that there would be a section in the legislation requiring the Task Force to continue for 2-3 years to monitor both the science of eyewitness identification and implementation of its recommendations. Justice Borden also cited the excellent work of Professor Cameron in developing a summary of eyewitness science, which had been circulated to members. Dean Saxton suggested and Justice Borden endorsed inclusion of the summary as an appendix in the final report. He also noted that the final draft of the report, based on recommendations discussed at today's meeting, would be prepared in time for the Wednesday, February 1st meeting.

Attorney Goodrow stated that she and Chief State's Attorney Kane had met and made some changes to the draft report; specifically, shortening Dr. Dysart's presentation and emphasizing that the science of eyewitness identification is continually evolving.

Attorney Farr asked if the draft of the proposed legislation was available for review and Justice Borden noted it would be available for the February meeting. Attorney Farr also stated his concerns about the techniques used in eyewitness identification for children and other populations, such as the elderly. He asked Professor Cameron about language used in other states on this issue. Professor Cameron noted that there was general language noting "special circumstances", for example, children under certain ages or elderly with stages of dementia. Attorney Farr noted that a statement was made in the meta-analysis that certain subgroups benefited from procedures other than sequential.

Justice Borden stated his hesitancy to begin carving out exceptions given one statement in the meta-analysis without vetting the question with the study's researchers. He also noted Chief Lovello's statement that the Chief could not remember a time in his career where this was an issue. Justice Borden stated this issue was a good example of one that both POST and the Task Force should continue to study. Dean Braxton questioned whether language could be added to the legislation that sequential would be used "absent exceptional circumstances".

Professor Cameron suggested that a recommendation be made in the Task Force report that POST develop practices dealing with these exceptions and also noted Chief Lovello's previous comments regarding children being treated very differently than adults in this matter. Assistant State's Attorney Colangelo concurred and suggested POST focus on this question in the training curriculum that POST will develop. Representative Hetherington noted the problem with putting exceptions into legislation. Attorney DelPrete-Sullivan stated that there was not enough information available to weigh in on the issue and that it should continue to be explored. Attorney Goodrow also stated that she and Chief State's Attorney Kane had developed language on the importance of police record-keeping which would describe why certain protocols weren't being used in particular cases. Senator Kissel stated the importance of POST's role in recommending protocols, but that recommendations should not abdicate the Task Force's responsibilities. He stated his sensitivity to Attorney Farr's concerns and that it should be an area requiring Task Force investigation over the next two years.

Representative Fox asked if there were different procedures presently used for children and other subgroups. Chief Lovello noted that it depended on the group and that children always have a different procedure which utilizes counselors and child guidance experts. Chief Flaherty underscored POST's commitment to engage in activities requested by both the legislature and Task Force. State Victim's Advocate Cruz agreed that there was not yet enough information to make a decision. Assistant State's Attorney Colangelo noted that line ups for children are not used. Lt. Rush-Kittle agreed that POST training was important and stressed the need for training to be available to State Police.

Justice Borden noted now far the Task Force had come and the unanimous consensus obtained on the recommendations package. He suggested the issue be included in the report as an area of inquiry and that the legislation be left alone. Attorney Goodrow offered to write the language to be included in the report.

Justice Borden asked for a vote on the package. With the exception of Attorney Farr, Task Force members voted unanimously for the recommendations report. Attorney Farr stated he was not opposed to the overall recommendations, but was opposed to not having exceptions for subgroups.

Justice Borden asked members if there were other comments on the draft report. It was reiterated that POST be responsible for establishing guidelines and training and that State Police needed to be included. Attorney Goodrow recommended the following language: "POST will be responsible for developing uniform mandatory policies and applicable guidelines which all law enforcement officials must follow."

Chief Lovello noted the importance of having a precise definition of blind/double blind throughout the document. Attorney Goodrow also noted that language regarding the recording viewing time was deleted. A recommendation was made that a standardized form be used by each police department so that the data can be tracked by the Task Force.

Professor Cameron asked about the number of laps. Senator Kissel responded that hours of testimony was given on this issue and the research was clear: after the second lap accurate identifications diminished. Attorney Farr noted that shuffling the images was not done in the AJS study. Attorney Steele stated that, in his testimony before the Task Force, Professor Wells said the photos should have been reshuffled. Chief Lovello agreed with Attorney Steele's recollection of the testimony. Chief State's Attorney Kane underscored the importance of POST's role and that the Task Force had agreed to require both sequential and a second lap (if requested by the eyewitness). He went on to say that, as the science evolves, the Task Force should continue to review the data. Professor Cameron noted that, in Hennipen County, police allowed up to 6 laps and found that after 3 30% of the identifications were fillers and that the number of fillers increased significantly in the 4th, 5th, and 6th laps. He recommended not leaving the number of laps open-ended. Justice Borden noted the science is well-established in this area underscoring that the science states the witness is exercising relative judgment after the second lap.

Chief State's Attorney Kane stressed the importance of amending the section in the existing statute that the filler photographs have to resemble the description of the perpetrator without recommended having the perpetrator stand out, noting that the existing statute's language is ambiguous.

Additional editorial recommendations were made with regard to reducing the amount of information in the body of the report and placing some information in the appendix. It was also suggested that the package of recommendations be placed up front in the report.

Justice Borden thanked Task Force members for their excellent suggestions and efforts. He noted that a revised report would be written and forwarded to the members prior to the next meeting of the Task Force, scheduled for Wednesday, February 1st. With no further business to discuss, the Task Force adjourned at approximately 12:15 p.m.