

Eyewitness Identification Task Force
Wednesday, November 2, 2011

Minutes

Attendees

Members:

Justice David Borden, Senator Eric Coleman, Representative John Hetherington, Attorney Hakima Bey-Coon, Dr. David Cameron, Professor John DeCarlo, Attorney Deborah DelPrete Sullivan, Attorney Robert Farr, Executive Director Thomas Flaherty, Executive Assistant State's Attorney Michael Gailor, Attorney Karen Goodrow, Chief Duane Lovello, Lt. Regina Rush-Kittle, Dean Bradley Saxton, Attorney Lisa Steele

Staff:

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

Minutes of Previous Meeting and Introduction of Speaker

Justice David Borden, Chair of the Task Force called the meeting to order at 10:11 a.m. Justice Borden asked members to review the minutes of the October 19th meeting. He asked that a motion be made to accept the minutes. A motion was made by Representative Hetherington, seconded by Director Flaherty and unanimously passed by Task Force members.

Work Plan

Justice Borden presented the proposed Task Force Work Plan for discussion. The first item on the plan, following Professor Wells' presentation at the previous meeting, is to identify and bring additional experts to speak before the Task Force. Justice Borden noted that, at the next meeting, two individuals from Massachusetts, William G. Brooks III, Deputy Chief of the Wellesley Police Department and Attorney Michael Fabbri, District Attorney of Middlesex County will be making presentations on their experiences using sequential line ups. Attorney Gailor noted that Chief State's Attorney Kane and Senior Assistant State's Attorney Richard Colangelo, Jr. were unable to attend and expressed their apologies. He noted that Professor Stephen Clark from the University of California Riverside expressed the opinion that the American Judicature Society study raised as many questions as it did answers. He mentioned that New York has conducted its own study on lineup procedures and decided not to adopt sequential line ups. He recommended that the Task Force consider obtaining further information on the New York position. Justice Borden agreed and stated that he would obtain contacts and try to get the views of both Professor Clark and of the New York representatives presented to an upcoming Task Force meeting.

Justice Borden noted that the timeline and workplan were ambitious and designed to help insure that, if consensus is reached, Task Force recommendations would be able to be brought to the General Assembly for their consideration by February 1st. Dean Saxton stated that the timeline looked right and noted that he hoped the Task Force could further hear from the law enforcement community, both through the survey as well as bringing representatives together who both are opposed to or in support of sequential line ups. Justice Borden agreed and asked Task Force members from law enforcement to contact their peers and asked that names be forwarded to him. Justice Borden further noted that the insights, cooperation, and support of law enforcement are critical to any recommendations being put forth by the Task Force.

Attorney Farr commented that the issue of show up identifications was important. Justice Borden noted that the city of Dallas had identified and put into place a policy on show ups. Justice Borden said he will check on it and have the issue put into the work plan. A question was raised about the use of mug books where there is no suspect. Justice Borden responded that the research being discussed by the Task Force applies only to instances when there is a suspect and that the Task Force's recommendations would be so limited to where a suspect has been identified.

The issue of assembly of the photo array was also raised. Justice Borden noted that this question has always been present, whether there are simultaneous or sequential line ups and that he is of the opinion that it is outside the scope of the Task Force's legislative mandate. Attorney Goodrow noted comparisons have to reflect the description of the witness and that there are best practice photo array protocols in jurisdictions throughout the country. A further question was raised regarding police not being able to show photos at the time the act is committed. Justice Borden noted that this question was not part of the Task Force's charge, but hoped the issue could be raised if the Task Force was to continue its work with staffing oversight in the months ahead.

Police Survey

Justice Borden noted that Chief Lovello and Dr. Schack had been working very hard on the police survey and asked that an update be given to Task Force members at the next meeting. Chief Lovello stated that a revised survey was being sent out by the end of the week. Dr. Schack noted that it builds on the original survey that Chief Lovello had done and also includes questions that were raised during Professor Wells' presentation. Specifically, the survey will capture a baseline of what is being used presently throughout the state and any challenges/barriers to implementation identified by police.

Presentation by Darien Police Chief Duane Lovello

Chief Lovello presented testimony regarding the Darien's Police Department's photo line up protocols. He began by describing the town, its population, and noted the town's very low crime rate and that violent crime was a rarity. Chief Lovello estimated that Darien used photo line ups 12 times per year and stressed that using eyewitness identification as the sole evidence in any case was difficult at best and could not recall the Darien Police Department doing so in the last 30 years.

Chief Lovello stated that the department began using the double-blind sequential protocol approximately 2 years ago. He reported that a minimal amount of training was needed and the method easy to implement. Chief Lovello described the new witness identification form and the witness instructions. After the line up, the officer also asks the witness to read three statements and initial the one that most accurately describes their opinion about whether h/she was or was not able to identify with certainty the offender. Chief Lovello also noted issues in developing a fair photo array.

The Chief spoke about the survey being distributed to all Connecticut police departments. He mentioned that the initial survey's results indicated that, regardless of department size, concerns were not raised about sequential line ups. The only issue mentioned by some police departments focused on the costs associated with software upgrades. There was concern raised about the first section of the legislation regarding double blind. He noted that the Act describes double blind only and that the Task Force might want to examine the double blind requirement and the option of blind line ups. Chief Lovello noted that he attended a panel discussion in Chicago recently on eyewitness identification reform and had the opportunity to meet and talk with the two individuals from Massachusetts who will be speaking before the Task Force at the next meeting. He found their perspectives insightful. ¹

Justice Borden thanked Chief Lovello for his excellent presentation and asked Task Force members if they had any questions. Discussion was raised by Professor DeCarlo about the possibility of using DMV photos. Representative Hetherington asked about the availability of personnel to administer the double blind; specifically the possibility of using a civilian employee. Chief Lovello noted that in a smaller police department, the number of civilians is limited and they work 8 a.m.-4 p.m. on weekdays. The Chief stated he was not opposed to using non-sworn personnel if properly trained, but that lineups had to be presented in a timely manner and could not be restricted to only weekday work hours, with the possible exception of minor offenses.

There was discussion about a blinded sequential process where shuffled envelopes are used. Dean Saxton asked about the ways in which instructions are given. In Darien, the officer is out of view so that the witness can not infer anything from facial or body expressions. Discussion also focused on the practicality of obtaining standard backgrounds in the photos. It was noted that given the hundreds of thousands of photos in larger police departments it could not be done. Other possible options discussed included software parameters being developed for height, skin color differences, etc. Chief Lovello emphasized it was imperative that every effort be made to insure that the process was fair. Attorney DelPrete-Sullivan asked how the instructions to eyewitnesses were given. Chief Lovello responded that the instructions were read aloud.

Professor DeCarlo commended the Darien Police Department for its policies and noted that the concept of using mugshots for line ups was simply not that sterile. Director Flaherty noted the practical problems of using photos from other cities (background, quality, etc.). and that ideally a statewide data bank would be best. Dean Saxton wondered about the possibility of photoshopping the photos to fade the background out. Attorney Goodrow thought the concept sounded reasonable.

¹ Chief Lovello's testimony is now available on the Task Force website.

Senator Coleman asked Chief Lovello about the reasoning behind the two empty envelopes given to the eyewitness. The Chief noted that the two empty envelopes are placed at the bottom of the pack to keep the witness moving through the photos without thinking h/she is done. Attorney DelPrete-Sullivan asked about the large mug books and whether they are still used. Chief Lovello responded that they were not used in the Darien Police Department and Lt. Rush-Kittle concurred that she had never seen a mug book used in her department. Attorney Goodrow noted that mug books are retained in some cases where through DNA a person convicted years ago is released and the state has to re-prosecute. Professor DeCarlo noted that mug books are generally not a good idea because of the body of literature labeled unconscious transference. Attorney Gailor noted the mug books can be useful in cold case homicides and also stated his concern from a prosecutorial perspective about the use of non-sworn personnel being used in eyewitness identification.

There was some discussion about how many “laps” witnesses should be given in the eyewitness identification process. Chief Lovello stated that the Darien Police Department allows a second pass only if requested by the witness. Justice Borden noted that research indicates that beyond 2 passes the level of accuracy begins to drop off.

Professor DeCarlo mentioned that when he was in law enforcement the concept of a mutual aid compact was used. He asked whether it would be beneficial to tape identifications. Chief Lovello responded that taping is advantageous and felt it should be examined by the Task Force. Justice Borden noted the importance for having a statewide standard to make it easier for personnel from one police department to another to assist in the eyewitness identification process across jurisdictional lines.

Attorney Farr asked what the investigating officer is authorized to say to the eyewitness about the eyewitness identification. Chief Lovello responded that nothing is said until arrest warrants are obtained, but that there are victim advocates who work with victims of sexual assault crimes. Attorney Goodrow also noted that in the best practices literature there appears to be different perspectives on whether to or not to reshuffle the photos.

Dates of Next Task Force Meetings

Justice Borden stated that the next meeting date was November 16th to be followed by a meeting on November 30th. At the next meeting, presentations from William G. Brooks III, Deputy Chief of the Wellesley Police Department and Attorney Michael Fabbri, District Attorney of Middlesex County will be made; survey results discussed; and legislative work group progress-to-date on what other states are doing will be presented.

With no further business to address, the Task Force adjourned at 11:24 a.m.