

**Task Force to Identify and Recommend Policies and Procedures to Improve the Accuracy of Eyewitness Identifications**

Minutes of Meeting of November 22, 2010

The following indicate language changes made by the Task Force at its meeting on 12/9/10:

- 'Underlined' = New language
- '~~Struck through~~' = Deleted language

The 5<sup>th</sup> meeting of the "Task Force to Identify and Recommend Policies and Procedures to Improve the Accuracy of Eyewitness Identifications" (hereafter, "the Task Force") was convened at the office of the Public Defender on Monday November 22, 2010 at approximately 9:00 AM.

Present at the meeting were the following members:

- John Hardiman (Public Defender)
- Gerald Coyne (Attorney General)
- Col. Joseph Moran (Central Falls Police Department, representing Rhode Island Police Chiefs Association)
- Professor Andrew Horwitz (Associate Dean of Academic Affairs, Roger Williams University Law School, representing the Rhode Island Association of Criminal Defense Lawyers)
- Chief Anthony Silva (Rhode Island Municipal Police Training Academy)
- Professor Ross Cheit, Brown University (academic appointment)
- Sgt. Shari Russell (RI State Police)
- Michael Evora, Esq. (Executive Director of the RI Civil Rights Commission for Human Rights)

Also present was Michael DiLauro of the Office of the Public Defender; James Cullen, law student intern at the Office of the Public Defender; and Laura Pacifici, student of Prof. Cheit at Brown University.

- Jerry Coyne indicated that New Jersey officials hesitant to come present their policy because the policy is still being worked out in litigation and that he is still trying to get Suffolk County (MA) D.A.'s office to attend.
- John Hardiman suggested that the Task Force has been exposed to all of the "best practices" and should now turn its attention to recommendations.
- Potential guidelines the Task Force agreed to:

1. Put only one suspect in the lineup;
2. Include at least 5 fillers;
3. Look for people who fit the victims' description;
- ~~4. When there is no clear perpetrator, look for the perpetrators who resemble suspect.~~
4. When there is a limited or inadequate description of the perpetrator provided by the victim / witness, or when the description of the perpetrator differs significantly from the appearance of the suspect, fillers should resemble the suspect in significant features, taking into account any unique or unusual features such as scars, marks, or tattoos.
5. Administrator to give instructions to witness in private;
6. Only one witness should be in the room at a given time looking at the photos.
7. If there is more than one suspect, use different fillers for each lineup
8. Witness to be told that suspect may not be in the pack; that witness does not need to identify anyone; that the investigation will go on whether or not he/she identifies a suspect (task force member comments that this last point – that the investigation will go on-- may be the most important)
9. Witness to make a documented statement declaring how certain he/she is
10. Administrator to refrain from saying anything to witness during procedure
11. What to do when witness asks if he/she correctly identified the suspect? [Many on task force concerned that] it is not fair to the victim to not tell them whether or not a suspect has been correctly identified. Any comment needs to carefully balance victims desire for safety and closure with not tainting subsequent identification.
12. Recommend that all police departments have a written procedure. However need to be aware that no one policy fits for each and every department. One suggestion could be to tell departments to adopt these guidelines and then tell them they can implement it in their own way

13. Recommend that the procedure be documented – i.e. who in the office created the photo display? Who administered the identification process? Keep copy of order of photos in case file.

14. Need to make the instructions more simplistic because of non-English speaking witnesses and those of limited intelligence. Will need to translate the directions into Spanish (and the many Spanish dialects)

15. Use of “blind” administrator is a “best practice”. However.....small departments might not have the resources to hire a blind administrator. Have an official from another jurisdiction come? What happens if someone is arrested at 3 AM? (Response: most identifications will happen during the day). Will this be an unfunded mandate? Problem could be addressed using the “File folder shuffle method”. How effective? In use less than 2 years old. Task Force might need more information and discussion on this issue.

- DISCUSSION OF THE PROBLEM AND POTENTIAL SOLUTIONS TO THE BLIND / SEQUENTIAL / SIMULTANEOUS / FOLDER SHUFFLE METHOD ISSUE:
  - Small departments might not have the resources to hire a blind administrator. Have an official from another jurisdiction come? What happens if someone is arrested at 3 AM? (Response: most identifications will happen during the day). Will this be an unfunded mandate?
  - Problem could be addressed using the “Folder shuffle method”. How effective? In use less than 2 If cannot use blind administrator, use file shuffle.
  - Document why they could not use blind administrator? [Members of task force heavily disagree about this]. Law enforcement won’t want to document why they didn’t use the “best practice” (i.e. blind administrator). Counterargument: Why can’t task force recommend blind administration if it’s the “best” policy? Concern about cases being thrown out by judge if explanation for why blind administrator was not used is not legitimate. If this procedure is made too difficult, people won’t follow it.
  - Should task force recommend other methods beyond file shuffle? Should it say that other practices can be used so long as they are just as good as blind administration practice?
  - Sequential versus simultaneous:

- Less misidentification when sequential method used. E.g. Vermont practice.
- Use sequential if photos are taken from different places.
- Most false identifications when simultaneous method used.
- Worst-case scenario: When sequential method is used with someone administering who knows who the suspect is. How important is sequential when use double blind method?
- Studies show positive identification when sequential method used is stronger (Information from Innocence Project former staffer)
- simultaneous method might be preferable when there is no blind administrator
- Sequential method may be preferable when nature of photos differ greatly

→ **Vote:** *Task force agrees that report will say that the best policy is blind, sequential .*

- Chief Silva would like Task Force to explain all of this to the police departments. The police departments do not know what the Task Force knows regarding, for example, the effectiveness of the sequential method. Include literature review with policy guidelines?

**Next task force meeting:** Thursday, December 9 at 9:00 AM, same location

**Police chief meeting:** Dec. 21, 2010

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Michael A. DiLauro