

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

Minutes of Meeting of September 29, 2010

'Underlined' = Additional language suggested on 12/9/10 by Michael D. Evora,
Esq., Executive Director of the RI Commission on Human Rights.

The 4th 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 Wednesday September 29, 2010 at approximately 1:00 PM.

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)
- Susan Pracht, Designee for Michael D. Evora, Esq., Executive Director of the RI Commission for Human Rights.

Also present was Michael DiLauro of the Office of the Public Defender and today's presenters, Dr. Garrett L. Berman, PhD, Associate Professor of Psychology, Roger Williams University and Detective Captain Kenneth E. Patenaude, Northampton (MA) Police Department (Retired).

Dr. Berman and Detective Captain Patenaude made the following presentations:

- Dr. Berman's presentation on human memory may be summarized as follows:
 - Human memory is reconstructive and not reproductive
 - The 3 stages of human memory are encoding, storage, and retrieval
 - Although problems can result at all 3 stages that may cause a mistaken eyewitness identification most occur at the "retrieval"

stage. Therefore “best practices” to prevent mistaken eyewitness identification focus on this.

- The difference between estimator and system variables. The latter deal mostly with the encoding and storage stages of human memory. They are the “nature of the thing” or problems that occur in the field that not much can be done about (e.g. stress, lighting, length of the incident). The former deals mostly with the retrieval stage of human memory and therefore problems at this stage can be addressed with “best practices”.
- Why “best practices”? Almost 35 years of continuous study and support by both academic and law enforcement communities.
- Problems with human memory can be analogized to trace evidence (e.g. contamination).
- Detective Captain Patenaude presentation on his experiences with and the implementation of “best practices” in his department may be summarized as follows :
 - Northampton Police initially went with USDOJ / NIJ OJP report and “best practices” guidelines with the exception of “blind” administration which was advisory.
 - The costs involved in doing training for the department in “best practices” was minimal.
 - Important to include prosecutors and officers in training in order to obtain “buy in”. They need to know why we are doing this and how it is an improvement over previous practice.
 - Two initial concerns were costs of implementation and locating a “blind” administrator. Neither materialized and eventually the department went with “blind administration.
 - Will provide the Task Force with the instructional forms used by Northampton Police Dept.
 - Recommends that the identification procedure be recorded.
 - Timeline for Northampton Police”
 - 2001 – policy adopted

- 2002 – mandated transition from simultaneous to sequential display. Sequential display addresses the problem with relative judgment.
- 2003 – mandated double “blind” administration
 - Confidence statements – “What about this person makes or helps you identify this person? What makes him look like the perpetrator?”
 - Don’t put suspect in 1st position
 - USDOJ / NIJ OJP report and “best practices” guidelines has a good instruction except for the part about “changing appearances”
- Before adjourning the Task Force thanked Dr. Berman and Det. Capt. Patenaude for their fine presentations.

Michael A. DiLauro