Eyewitness Identification Task Force
Wednesday, October 19, 2011

Minutes

Attendees

Members:

Justice David Borden, Representative Betty Boukus, Senator Eric Coleman, Representative Gerald Fox III, Representative Auden Grogins, Representative John Hetherington, Representative Ed Jutila, Senator John Kissel, Dr. David Cameron, Chief Duane Lovello, Senior Assistant State's Attorney Richard Colangelo, Jr. Attorney Michelle Cruz, Professor John DeCarlo, Attorney Deborah DelPrete Sullivan, Attorney Robert Farr, Executive Director Thomas Flaherty, Attorney Karen Goodrow, Ms. LaReese Harvey, Chief Duane Lovello, Chief State's Attorney Kevin Kane, Lt. Regina Rush-Kittle, , Dean Bradley Saxton, Attorney Lisa Steele Chief Beau Thurnauer

Guest:

Professor Gary Wells, Distinguished Professor of Liberal Arts and Sciences and The Wendy and Mark Stavish Chair in Social Sciences, Iowa State University

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 Eyewitness Identification Task Force, convened the meeting and asked members to review the minutes of the September 19th meeting. Chief State's Attorney Kane made a motion to accept the minutes. The motion was seconded by Senator Kissel and unanimously passed by Task Force members.

Justice Borden welcomed Professor Gary Wells, internationally-renowned scholar on eyewitness identification and introduced him to the Task Force.

Presentation by Professor Wells

Introduction and Overview

Professor Wells began his remarks by stating that the specific focus of his presentation before the Task Force was on simultaneous vs. sequential line-ups. He stressed the importance of understanding what "we know scientifically and how we know it." Professor Wells explained that a number of years ago he began conducting his research by first creating events where the perpetrator and incident were identified. He then began manipulating various factors, for example: the characteristics of witnesses; instructions prior to the line-ups; types of line-ups; and, the behaviors of the line-up administrators.

Through these efforts, Professor Wells identified the process of relative judgment in 1984, which remains a staple idea in eyewitness science today. Professor Wells explained this to mean that when an eyewitness makes a selection in a line-up, h/she selects a person who looks most like the perpetrator relative to other members of that line-up. The problem is this: to the eyewitness, someone is always going to look more like the perpetrator than the remaining members – even when the perpetrator is not in the line-up.

In the lab, Professor Wells unsuccessfully tried to create situations where eyewitnesses did not make relative judgments. He noted his lack of success due, in part, to relative judgments being a natural process. He then began to research ways to improve eyewitness performance through the sequential as opposed to the simultaneous procedure. Professor Wells explained this procedure requires each witness to view a number of perpetrators, individually and sequentially, without knowing how many will appear. The eyewitness can respond "yes, no, not sure" to each viewing. This process allows the eyewitness to compare individual perpetrators to their memory rather than to other perpetrators.

Professor Wells noted that in a recent laboratory test involving 13,143 participant witnesses worldwide, mistaken identifications were reduced by 22% using the sequential vs. simultaneous method while the identification of the perpetrator was reduced by 8%. Professor Steven Penrod of John Jay College then examined the 8% figure more deeply and found that the 8% figure diminishes when certain factors are considered, such as not knowing how many perpetrators are in the line-up.

While these findings were important, they were laboratory findings. Professor Wells posed the question "what happens in the real world to actual witnesses who observe crimes?" His research has found that sequential tends to work better and that there are certain procedures that help the process. These procedures include: backloading, where the eyewitness does not know how many perpetrators will be viewed; a continuation procedure which allows the eyewitness to go through the remaining photos even if an identification has been made; allow the eyewitness to talk through and potentially resolve a situation whereby h/she makes more than one identification (and have as a matter of record); and, if the witness requests a second review, to allow it, (and also have it as a matter of record).

Chief State's Attorney Kane noted the importance of relative judgments as a legitimate process as well as the importance of circumstantial evidence, stating that the goal needs to be to make these procedures most reliable without creating a barrier to legitimate circumstantial facts. Professor Wells agreed with Attorney Kane. Professor Wells also noted that eyewitness identification is worth weighing along with other information and that it should be made clear from the outset that eyewitnesses should not be made to feel that they have to be 100% certain to make an identification.

The 2011 Field Study

Professor Wells proceeded to discuss the simultaneous vs. sequential field experiment that was conducted, under the auspices of the American Judicature Society over two years, ending in 2011 with 4 police departments – Austin, TX; Charlotte, NC; San Diego, CA; Tucson, AZ. The study involved working closely with both prosecutors and police departments and was funded by the JEHT, Open Society and Arnold Foundations. The main characteristics of the study included photo line-ups which were administered by laptop computers, to insure all instructors followed the same protocol. All responses were automatically entered on record and audiotaping was used to make the identification. Further, random assignment was used at the last possible second for either the simultaneous or sequential process and the photos were scrambled. In addition, the process was double-blind, i.e., the detective in the room did not know which person was the real suspect. The study found that sequential line-ups yielded identification of the suspect in 27.3 % of the cases, while simultaneous lineups yielded an identification of a suspect in 25.5 %. This difference was not statistically significant. However, the study found a significant reduction in the number of times victims misidentified someone. The misidentification of the perpetrator identified by the victims was 18.1% under the simultaneous method and 12.2% under the sequential method. Thus the field study corroborated the numerous lab studies that using the sequential procedure significantly reduces the rate of misidentification of an innocent person while not significantly reducing the rate of accurate identification of the actual perpetrator.

Professor Wells underscored the importance of the sequential method in improving accuracy, while noting that it was not a silver bullet. Dean Saxton asked about videotaping. Professor Wells stated that videotaping was not a part of this study, but could easily be done in the future. Dr. Cameron noted that, while not statistically significant, it appeared that the 2nd lap of eyewitnesses viewing the photos yielded a higher percentage of accuracy, He asked Professor Wells whether there were any limits to the number of laps. Professor Wells replied that the study was limited to 2, but in Hennepin County witnesses were allowed as many laps as possible. Findings in Hennepin were that by the 3rd, 4th, and 5th lap, eyewitness accuracy was reduced.

Attorney Farr noted that while sequential certainly worked more effectively than simultaneous line-ups, the principles of live line-ups vs photos appeared to apply to both. Professor Wells noted that Brooklyn conducts live line-ups sequentially.

Professor Wells also stated that the Dallas Police Department developed a "common sense" policy regarding show-ups. He noted that show-ups are a problem, primarily because there are no fillers. He noted that it doesn't mean show-ups should be banned. Dallas' position is that if there is probable cause for an arrest, that the arrest be made and no show-up is done. However, if there are multiple witnesses, then the Dallas police conduct the show-up with just one of them. Professor Wells stated that technology is being developed where hand-held phones or laptops can tap into photo line-ups for witnesses at the scene.

Chief State's Attorney Kane asked what some of the options are regarding blind versus double blind. Professor Wells noted that there are low and high tech ways. Professor Wells noted the importance of flexibility and that the traditional double blind avenue is not the only avenue to be used. One low tech option is having photos shuffled and marked in separate envelopes. The envelopes are then turned over to the witness and the investigator does not see which envelope has the picture of the perpetrator. On the high tech end, laptops can be used where the order of the photos is scrambled. Attorney Kane noted the possibility of asking for assistance from an adjacent police department. A question was raised regarding the number of fillers in a line-up. Professor Wells stated while there was no magic number, there appeared to be diminishing returns over the 4-6 option and noted that the fillers had to be "quality fillers".

On behalf of the Task Force members, Justice Borden expressed his sincere thanks to Professor Wells for the professor's outstanding presentation.

Other Business

Justice Borden recommended that the next two meeting dates for the Task Force be November 2nd and November 16th. At the November 2nd meeting, he suggested that the proposed work plan and the results of the police department survey be presented and discussed. On November 16th, the Deputy Chief of Police in Wellesley MA and Assistant District Attorney of Middlesex County, MA will present their experiences with eyewitness identification procedures.

With no further business to conduct, the Eyewitness Identification Task Force adjourned at 12:40 p.m.