Eyewitness Identification Task Force
Wednesday, December 13, 2011
Minutes

Attendees
Members:

Justice David Borden, Senator Eric Coleman, 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

Introduction
Justice Borden called the meeting to order at approximately 10:05 a.m. He stated that he was taking an agenda item out of order and introduced Professor David Cameron of Yale University to present a two page summary comparing simultaneous to sequential presentations, in both lab experiments and field studies. Professor Cameron also prepared a memo on Professor Clark's report.

Professor Cameron's Presentation

Professor Cameron summarized the American Judicature Society (AJS) meta-analysis and lab experiments as well as several field studies which were conducted prior to the American Judicature Society (AJS) study. He stated that these studies were the "bottom line" results in considering the issue of simultaneous vs. sequential. He began by discussing the lab experiments, prefacing that the meta-analysis simply summarizes the results of all of the experiments that have been conducted.

According to the 2011 AJS analysis, Professor Cameron noted there have been 75 lab experiment studies considering simultaneous vs. sequential in the United States, Canada, Australia, Germany, the U.K. and other countries. The AJS study identified a subset of 27 fully randomized tests since 1985 with both suspects present and absent. He noted that this was the best way to conduct these tests. In suspect id's with the suspect present, the difference in the findings was 8% between simultaneous and sequential. He noted that Professor Clark was only concerned with false identifications, not filler identifications. Professor Cameron also noted that false identifications, according to Professor Clark, are identifications of suspects who are, in fact, innocent as opposed to the identification of suspects who are guilty and noted that Professor Clark disregards all of the other filler id's.

Professor Cameron also presented the results of 3 field studies, the first in Hennepin County Minnesota, where a test of sequential double blind was conducted. The findings were that substantially fewer filler ids, 8-10%, were made (if witnesses who the suspect knows are removed) as compared to 24% in simultaneous procedures. He noted that the most well-known study is the 2006 Mecklinberg Report, which was ordered by the Illinois Legislature

Professor Cameron replied that in Professor Dysart's presentation on the meta-analysis, she stated there were a higher number of suspect ids in Austin, Tuscon, Charlotte and San Diego with the sequential rather than simultaneous method. However, the only city where there were enough lineups to feel confident was Austin.

With no additional questions raised, Justice Borden thanked Professor Cameron. He then referred to the previous meeting's minutes and asked that Task Force members review the minutes at a later time and send any changes/corrections to him in the next several days.

Discussion of Task Force Recommendations

Justice Borden stated that great deal of information had been gathered by the Task Force and asked whether the Task Force was prepared to recommend sequential as opposed to simultaneous procedure as legislative policy. He also stated that concerns had been raised about blind/double blind and that the Co-Chairs of the Judiciary Committee stated there would be an opportunity to revise current statutory language in this regard.

Justice Borden suggested that the role of the Task Force was to make policy recommendations, leaving the drafting of the legislation to the Office of the Legislative Commissioner. He identified Attorney Rick Taff, staff to the Judiciary Committee, as the staff person responsible. Justice Borden asked Task Force members for their opinions on the recommendation of sequential in lieu of simultaneous. Chief Lovello began by stating that extensive discussions were held between Chief Thernauer, President of the Connecticut Chiefs of Police, Director Flaherty and himself are ready to support Option B.

Attorney Farr raised a concern about the age of witnesses in the meta-analysis. He stated that there was a report which demonstrated an advantage for sequential lineups when children were involved as witnesses and that this report was not included in the previously discussed meta-analysis. Attorney Farr expressed concern that, if sequential procedure is mandated and the simultaneous procedure is better for children, the police could be restricted in using the latter. He asked Professor Cameron for his thoughts on whether there should be some flexibility for police departments.

Professor Cameron responded that the question gets to the issue relative judgment (identifying the person who did commit the crime rather than the person who looked the most like the person who commited the crime) and suggested that modifying instructions for children would be helpful. Professor John DeCarlo responded that in the case of child molestation, most persons who are child molesters know the victim and that the number of times that lineups would be used for children would be miniscule. Chief Lovello also noted that the lineup procedure for children is very different than the process used for adults in which the process is conducted in a controlled environment with police observing and counselors administering the questions. He also noted, in his 30 years of law enforcement, he never saw a child put through an eyewitness identification procedure.

having a model policy. He further noted that a model statewide policy would make training easier and would enhance the profession as a whole.

Attorney Goodrow's shared her opinion that the Task Force should not micromanage the statute, noting that New Jersey's language included language that said "based on best practices" and that through training issues such as child witnesses as well as others -- for example those with mental impairment could be reviewed. State's Attorney Kane concurred also noting that another good example is the question of double blind vs. blind. He noted it was much harder to justify not using either, but there may be occasions when the double blind is not practical. He expressed his hope that the Task Force would be able to examine the language in the first part of the existing legislation and that POST could put forth best practice recommendations where double blind is the best policy and blind used when necessary. Attorney Kane felt it would be much harder for a police department to justify not using blind or double blind.

With regard to Option B, Director LaReese Harvey asked if the Task Force had identified any specific police departments for piloting videotaping procedures and would they be the ones that have the highest incidences of witness coaching or tampering. Justice Borden said there were no police departments identified and that the recommendation to establish a pilot program for videotaping of eyewitness procedures would be left up to the law enforcement community. Ms. Harvey also noted that her understanding from Chief Lovello's comments pertaining to child eyewitnesses is that the police approach with children has always been different and did not feel that it should hamper the ability of the Task Force to move forward.

Representative Hetherington asked what a judge would do with best practices information when a motion to exclude comes up. Justice Borden asked State's Attorney Kane if there were any rule on the topic and Attorney Kane said no. Justice Borden stated it would be up to the court to determine the reliability of the information before it. Justice Borden noted if Connecticut can institute uniform best practices throughout the state, problems in courts will not arise because the identifications being brought forward will be based on best practices and will far outstrip the constitutional requirement.

Professor Cameron followed with a question regarding mandates vs. best practices.
He asked if, for example, the language might be "all departments are mandated to follow procedures that are regarded as best practices when possible for blind and sequential". Professor Cameron raised concerns about the subjectivity of simply using the term best practices. Attorney Goodrow responded that mandating best practices gives law enforcement the ability to change as best practices emerge. She noted that the key is uniformity and that the same training POST would be developing for police should also be made available to prosecutors and public defenders. If best practices are not followed, the police department can present to the court the reasons why the practices could not be followed in a particular case. She noted that, by way of example, audio and videotaping have actually assisted more because all of the stakeholders can view the same information.

Attorney Goodrow noted that the recommendation before the Task Force is to mandate sequential according to best practices. Professor Cameron emphasized that the two have to be linked and asked whether there should be a caveat when departments have to divert

to POST to work on. Attorney Farr also asked about the cost of videotaping. Justice Borden responded that it was only a suggestion as a pilot and noted the possibility of a police department seeking a grant for that purpose. The last item Attorney Farr raised was regarding the recommendation to track the number of eyewitness procedures. While he thought it was an excellent suggestion, he wondered about its practicality. Attorney Farr suggested the possibility of a form that could be filled out by law enforcement annually as a potential tool. Justice Borden wondered if the recommendation was too specific and suggested that POST recommend a process for gathering statistics.

Professor Cameron mentioned that it appeared the items listed in Option B focused on sequential vs. simultaneous only and asked whether the Task Force should return to the issue of blind/double blind as a best practice rather than simply as a next step. He spoke to the current emphasis in the literature about non-blind administration. Representative Fox responded by noting that there was a public hearing where law enforcement from MA spoke to the blind procedure being quite effective. He stated that the legislation passed last year made specific reference to double blind and, with the Task Force weighing in on this issue, it would make sense to improve the language to make it more workable for all the departments throughout the state, large or small.

Attorney Farr noted that in the police survey conducted by the Task Force, departments described their concern with the double blind procedure. Chief State's Attorney Kane agreed that the Task Force should recommend that the section in the Act regarding double blind be amended. Attorney Kane also noted that there was another section in the act which needed to be examined -- the inconsistency within Section B(3) of PA 11-252 regarding the photo array. It states that the lineups should be composed of fillers who generally fit the description of the person suspected as the perpetrator and in a photo lineup that the photograph of the person suspected as the perpetrator resemble h/her appearance at the time of the offense. Attorney Kane noted that the problem is a real one -- where the victim or witness describes the perpetrator as having certain characteristics and that differs from the police photos. He felt that this was an issue which the Task Force has to address. Attorney Kane also cited the New Jersey Supreme Court opinion, written in August, which stated that the record is very unclear on the use of fillers. He noted that it calls into question the credibility of this section of the statute. Further, Attorney Kane stated that as it is law in the state now, police are obligated to follow it. He expressed his hope it could be amended this session as well. Attorney Kane offered to draft language and Justice Borden said it would be forwarded to staff.

Dean Saxton raised a question about relative judgment and whether it would be possible within a sequential procedure, particularly using software, to ask the witness to select one of four options (not actual wording): I'm sure the person is the one who attacked me: I'm sure the person is not the one who attacked me; I don't think that is the person who attacked me, but looks a bit like h/her or I don't think that is the person who attacked me, but it looks a lot like him. He noted this might be a way to capture if relative judgment is occurring and asked if it would be helpful to law enforcement for investigatory purposes. Chief Lovello noted that it was similar to confidence statements presently used and Justice Borden stated that at this point that may be too much detail.