

**TASK FORCE TO IDENTIFY & RECOMMEND POLICIES & PROCEDURES TO
IMPROVE THE ACCURACY OF EYEWITNESS IDENTIFICATION**

Rhode Island General Laws §12-1-16.

December 27, 2010

Gerald J. Coyne
Deputy Attorney General

John J. Hardiman
Public Defender

Sgt. Shari Russell
Rhode Island State Police

Col. Joseph P. Moran, III,
President, Rhode Island Police
Chiefs Association

Chief Anthony J. Silva,
Executive Director,
Rhode Island Municipal
Police Training Academy

J. Richard Ratcliffe, Esq.,
Designee for the Rhode Island
Bar Association

Andrew Horwitz, President,
Rhode Island Association of
Criminal Defense Lawyers

Ross E. Cheit, JD, PhD
Associate Professor of Political
Science & Public Policy,
Brown University

Michael D. Evora, Esq.,
Executive Director,
Rhode Island Commission for
Human Rights

The Honorable Donald L. Carcieri
Governor of the State of Rhode Island
The Statehouse
Providence, RI 02903

The Honorable Paul A. Suttell
Chief Justice of the Rhode Island Supreme Court
250 Benefit Street
Providence, RI 02903

The Honorable Lincoln D. Chafee
Governor-Elect of the State of Rhode Island
The Statehouse
Providence, RI 02903

Senator M. Teresa Paiva Weed
President of the Senate
The Statehouse
Providence, RI 02903

Representative Gordon D. Fox
Speaker of the House of Representatives
The Statehouse
Providence, RI 02903

Senator Michael J. McCaffrey
Chairman, Senate Judiciary Committee
The Statehouse
Providence, RI 02903

Representative David A. Caprio
Chairman, House Judiciary Committee
The Statehouse
Providence, RI 02903

**RE: Final Report of the TASK FORCE TO IDENTIFY & RECOMMEND
POLICIES & PROCEDURES TO IMPROVE THE ACCURACY OF
EYEWITNESS IDENTIFICATION;
RIGL §12-1-16**

Dear Governor Carcieri, Chief Justice Suttell, Governor-Elect Chafee,
President Paiva Weed, Speaker Fox, Chairman McCaffrey & Chairman
Caprio:

It is our pleasure to inform you that the *TASK FORCE TO IDENTIFY & RECOMMEND POLICIES & PROCEDURES TO IMPROVE THE ACCURACY OF EYEWITNESS IDENTIFICATION* has completed its work. In compliance with the legislative mandate we are submitting its final report for your consideration.

As you may know wrongful convictions based upon mistaken eyewitness identification are a leading cause of wrongful convictions in the United States. Therefore during its 2010 session the Rhode Island General Assembly enacted *R.I.G.L. §12-1-16*, comprehensive legislation creating a Task Force of criminal justice stakeholders empowered to identify and recommend policies and procedures to (1) prevent the injustice of a wrongful conviction caused by mistaken eyewitness identification; (2) improve lineup procedures during criminal investigations; and (3) further improve the already high quality of criminal justice in our state. The legislation requires that the Task Force, in consultation with eyewitness identification practitioners and experts, develop guidelines for policies, procedures and training with respect to the collection and handling of eyewitness evidence in criminal investigations by law enforcement agencies in Rhode Island. The purpose of the guidelines is to provide law enforcement agencies with information regarding policies and procedures proven to increase the accuracy of the crime investigation process, thus also reducing the possibility of wrongful convictions. In that regard, the Task Force's consideration is to include a number of enumerated and acknowledged "best practices" for conducting eyewitness identification procedures during police investigations.

The Task Force met to begin its work during the summer of 2010 and, in a series of seven (7) meetings held throughout the fall heard from a series of distinguished experts in the fields of human memory, police procedures and "best practices" including Dr. Garrett L. Berman, PhD, Associate Professor of Psychology, Roger Williams University; Detective Captain Kenneth E. Patenaude, Northampton (MA) Police Department (Retired); and Ezekiel Edwards, Esq., a Staff Attorney / Mayer Brown Eyewitness Fellow at the Innocence Project. The Task Force also was guided by efforts at both the state and local level in this area, including the reports of the study committees, task forces, "best practice" recommendations and written policies from a number of different states and localities across the country. During the course of its work, the Task Force also was pleased to learn that several Rhode Island law enforcement agencies had already adopted written policies containing "best practices" including the Bristol, Cumberland and Warwick Police Departments and the Rhode Island State Police.

It is also our pleasure to report that a spirit of collaboration and cooperation was present throughout the work of the Task Force. Especially as the Task Force was made up of such an extraordinarily diverse group of criminal justice stakeholders, we believe that such a spirit is unprecedented in the history of our state. Indeed, we are proud to inform you that there was complete unanimity in the eleven (11) recommendations made in the report including that *R.I.G.L. §12-1-16* be amended during the 2011 session of the General Assembly to extend the life of the Task Force so that it may continue its important work in this area.

On behalf of the entire Task Force we want to thank you for the opportunity to help improve the quality of justice in our state.


Respectfully Submitted,

The TASK FORCE TO IDENTIFY & RECOMMEND POLICIES & PROCEDURES TO IMPROVE THE ACCURACY OF EYEWITNESS IDENTIFICATION: *RIGL §12-1-16*.

BY:

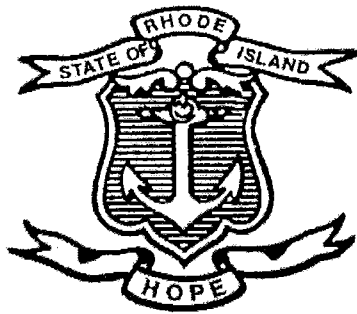


Gerald J. Coyne
Deputy Attorney General



John J. Hardiman
Public Defender

Enclosures: 1. Task Force Final Report 2. APPENDIX [CD-ROM]



FINAL REPORT

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

R.I.G.L. §12-1-16

December, 2010

MISSION & METHODOLOGY

During its 2010 session the Rhode Island General Assembly enacted *R.I.G.L. §12-1-16*, comprehensive legislation creating a Task Force of criminal justice stakeholders empowered to identify and recommend policies and procedures to (1) Prevent the injustice of a wrongful conviction caused by mistaken eyewitness identification; (2) Improve lineup procedures during criminal investigations; and (3) Further improve the already high quality of criminal justice in our state. The legislation requires that the Task Force, in consultation with eyewitness identification practitioners and experts, develop guidelines for policies, procedures and training with respect to the collection and handling of eyewitness evidence in criminal investigations by law enforcement agencies in Rhode Island. The purpose of the guidelines is to provide law enforcement agencies with information regarding policies and procedures proven to increase the accuracy of the crime investigation process, thus also reducing the possibility of wrongful convictions. In that regard, the Task Force's consideration is to include, but not be limited to, the following:

1. "blind" administration of lineups
2. specific instructions to be given to the eyewitness before and during the lineup to increase the accuracy of any identification
3. the number and selection of fillers to be used in lineups
4. the use of sequential lineups versus non-sequential lineups

5. inclusion of only one suspect in any lineup
6. the value of refraining from providing any confirmatory information to the eyewitness
7. standards and protocols to be used in the administration and conduct of an identification procedure
8. what training, if any, should be made available to law enforcement personnel in the use of these procedures and
9. taking a confidence statement from the person viewing the lineup.¹

Upon completion of its work, the Task Force is required to submit a report on the guidelines developed and recommendations concerning their use which shall be presented to the Governor, the Chief Justice of the Rhode Island Supreme Court, the Speaker of the House of Representatives, the President of the Senate, and the Chairpersons of the Judiciary Committees of both the House of Representatives and the Senate. The Task Force shall terminate on the date that it submits its report but no later than January 1, 2011.²

The Task Force met to begin its work during the summer of 2010 and, in a series of meetings held throughout the fall,³ heard from a series of distinguished

¹ Additional descriptive and other information about these acknowledged and enumerated "best practices" will be provided throughout this report and in the APPENDIX.

² APPENDIX 1: *R.I.G.L. §12-1-16*. The members of the Task Force include the following or their designees: Attorney General; Superintendent of the Rhode Island State Police; President of the Rhode Island Police Chief's Association; Head of the Municipal Police Training Academy; a representative of a Rhode Island university with expertise in the relevant social sciences as demonstrated by teaching, publication, and other scholarly pursuits; the Public Defender; President of the Rhode Island Bar Association; President of the Rhode Island Association of Criminal Defense Lawyers; and the Executive Director of the Rhode Island Commission for Human Rights.

³ APPENDIX 2: Minutes of Task Force Meetings held on August 12, 2010; August 27, 2010; September 17, 2010; September 29, 2010; November 22, 2010; December 9, 2010; and

experts in the fields of human memory, police procedures and “best practices” including:

1. Dr. Garrett L. Berman, PhD, Associate Professor of Psychology, Roger Williams University. Dr. Berman received his PhD in Applied Psychology from Florida International University and his Bachelor of Science in Psychology from the State University of New York. He has taught courses in Cognitive Psychology, Legal Psychology, Advanced Legal Psychology and Research Methods. In addition to teaching, research, independent study and frequent publications in the field of human memory, Dr. Berman has done regular training in this area for the Rhode Island law enforcement community.
2. Detective Captain Kenneth E. Patenaude, Northampton (MA) Police Department (Retired). Detective Captain Patenaude was appointed by Attorney General Janet Reno to the United States Department of Justice / National Institute of Justice / Office of Justice Programs Technical Working Group on Eyewitness Evidence which produced *Eyewitness Evidence: A Guide For Law Enforcement (1999)* and *Eyewitness Evidence: A Trainer's Manual For Law Enforcement (2003)*. Detective Captain Patenaude is a pioneer in this field, having implemented the “best practices” recommended in the USDOJ / NIJ / OJP reports via written policies in his own department. Both reports are available online at <http://www.ojp.usdoj.gov> and the Northampton (MA) Police Department written policies and other materials regarding eyewitness identification procedures are in APPENDIX 3.
3. Ezekiel Edwards, Esq. Mr. Edwards is a Staff Attorney / Mayer Brown Eyewitness Fellow at the Innocence Project. He received his J.D. from the University of Pennsylvania Law School in 2002, where he was a Public Interest Scholar. In response to the fact that 75% of post-conviction DNA exonerations have involved mistaken eyewitness identification, Mr. Edwards has spearheaded efforts to reform eyewitness identification laws and procedures through a comprehensive strategy of litigation, education and policy advocacy. Most recently, his efforts as trial and appellate counsel in *State v. Henderson* culminated in the most timely and comprehensive overview of efforts in this area to date, the Report of the Special Master released

December 20, 2010. Additional supporting materials provided to the Task Force by Dr. Berman, Detective Captain Patenaude, and Attorney Edwards.

on June 18, 2010 and ordered by the New Jersey Supreme Court in *State v. Henderson*, 2009 N.J. LEXIS 45 (NJ 2/26/09). APPENDIX 4.^{4,5}

The Task Force also was guided by efforts at both the state and local level in this area, including the reports of the study committees, task forces, "best practice" recommendations and written policies from the following states and localities:

- Georgia
- Illinois
- New Jersey
- Vermont
- Wisconsin
- Suffolk County, Massachusetts District Attorney's Office and Boston Police Department
- Santa Clara County, California Police Department

⁴ APPENDIX 4: Report of the Special Master in *State v. Henderson*. In *Henderson* the New Jersey Supreme Court remanded for a plenary hearing "to consider and decide whether assumptions and other factors reflected" in the two-part test for admissibility of eyewitness identification evidence under *Manson v. Braithwaite* "remain valid and appropriate in light of recent scientific and other evidence." An extensive hearing was held and on June 18, 2010, the Special Master issued this 88-page report. It provides a comprehensive review of all the factors social scientists have identified that can undermine the reliability of eyewitness identifications (witness/situational and procedural), as well as a survey of science-based, state and local procedures for the collection of eyewitness evidence and a survey of legislative action and state court decisions incorporating the scientific findings regarding the potential unreliability of eyewitness identifications.

⁵ The Task Force wishes to publicly acknowledge and thank Dr. Berman, Detective Captain Patenaude, and Attorney Edwards for making their extraordinary knowledge and experience available to this important effort. Their assistance to the Task Force was invaluable.

- Northampton, Massachusetts Police Department.⁶

During the course of its work, the Task Force also was pleased to learn that several Rhode Island law enforcement agencies had already adopted written policies containing “best practices” including the Bristol, Cumberland and Warwick Police Departments and the Rhode Island State Police.⁷ The Task Force applauds these departments for their vision and ongoing efforts in this important area.

Finally, in addition to the presentations and information previously discussed, the Task Force also had a wealth of information made available to it from a variety of sources that proved to be both informative and helpful in completing its work.⁸

RECOMMENDATIONS

After careful consideration and review of all of the information and material provided to it, the Task Force voted unanimously to identify and recommend the

⁶ APPENDIX 3: Reports of the study committees, task forces, “best practice” recommendations and written policies from the following states and localities: Georgia; Illinois; New Jersey; Vermont; Wisconsin; Suffolk County, Massachusetts District Attorney’s Office and Boston Police Department; Santa Clara County, California Police Department; and Northampton, Massachusetts Police Department

⁷ APPENDIX 5: Written policies of the Bristol, Cumberland and Warwick Police Departments and the Rhode Island State Police regarding eyewitness identification procedures.

⁸ APPENDIX 6: Miscellaneous information made available to the Task Force. Described in detail, *infra*.

following policies and procedures as “best practices” to improve the accuracy of eyewitness identification:⁹

RECOMMENDATION #1: Regarding the use of written policies for conducting eyewitness identification procedures, the Task Force recommends that:

- a. By June 1, 2011, every Rhode Island law enforcement agency should have a written policy in place for conducting eyewitness identification procedures.
- b. Such written policies should be consistent with: 1) the recommendations contained in this report; 2) the training afforded law enforcement personnel by the Rhode Island Municipal Police Training Academy;¹⁰ and 3) oversight given by the Department of the Attorney General.
- c. For ease of use, a written policy should contain an initial “Definitions” section as do those of the Bristol, Cumberland and Warwick Police Departments and the Rhode Island State Police.¹¹

⁹ For the purpose of this report: 1) the phrase “eyewitness Identification” refers to procedures used by the police after the police have identified a particular suspect; 2) unless otherwise noted the word “lineup” shall refer to both a physical and photographic lineup; and 3) the “Definitions” section of the Rhode Island State Police written policy is incorporated by reference. APPENDIX 5.

¹⁰ See, RECOMMENDATION #10, *infra*.

¹¹ APPENDIX 5

- d. Written policies should also contain appropriate forms for use by law enforcement personnel during eyewitness identification procedures.¹²

RECOMMENDATION #2: Regarding the “blind” administration of lineups, the Task Force recommends that:

- a. Unless it is not practicable, a lineup shall be conducted by a blind administrator, meaning an administrator who does not know which person or photograph in the lineup is the suspect and which persons or photographs are the fillers.¹³
- b. When it is not practicable to use a blind administrator, a photographic lineup shall be conducted by a blinded administrator, meaning an administrator who does not know which photograph in a sequential lineup the victim/witness is viewing at the time the victim/witness is viewing it or who does not know the number or position of the suspect in a simultaneous lineup at the time the

¹² Suggested model forms are contained in and can be found at the conclusion of the written policies of the Bristol, Warwick and Rhode Island State Police Departments. APPENDIX 5. Also see those used by the Northampton (MA) Police Department and made available to the Task Force by Detective Captain Patenaude. APPENDIX 2, Supporting Materials Folder, 0408 a.doc & 0408 b.doc; APPENDIX 4, NHPD_0408.doc & NHPD_0408 a.doc

¹³ The Task Force recommendation of the use of a blind administrator should not be interpreted as any sort of commentary on the integrity of Rhode Island's law enforcement community. Rather, it is an effort to take a fundamental principle of all properly conducted experiments – that the person administering the experiment should not have any information or predisposition about what the subject's response should be – and apply it to eyewitness identification procedures. Using a blind administrator eliminates the possibility, which has been proven to exist in the eyewitness identification setting, that a witness could seek and that an administrator could inadvertently provide cues as to an expected response.

victim/witness is viewing it.¹⁴ The administrator should not be able to see any photographs when the victim/witness is viewing them.

RECOMMENDATION #3: Regarding the number, selection and display of fillers in lineups the Task Force recommends that:

- a. Lineups should be assembled and conducted in a manner that promotes reliability, fairness and objectivity in the identification process and in a manner that ensures that they are non-suggestive.
- b. Each victim/witness should view the lineup separately from any other victim/witness.
- c. Only one (1) suspect should appear in each individual lineup.
- d. In addition to the suspect, a lineup should contain at least five (5) fillers.
- e. Lineups should be composed so that fillers generally resemble the eyewitness's description of the perpetrator while ensuring that the suspect does not unduly stand out from the fillers.

¹⁴ Some jurisdictions that have been concerned about the practicability of requiring a blind administrator under all circumstances have adopted procedures allowing for an administrator to be "blinded." One recognized method is the "folder shuffle method" utilized in Wisconsin and Minnesota. This method, is described in detail in the Report of the Wisconsin Attorney General entitled *Model Policy and Procedure for Eyewitness Identification*, reproduced in APPENDIX 3. The procedure may be summarized as follows: 1) The lineup administrator randomly numbers a photograph of the suspect and photographs of each of the fillers and places each one individually into a folder; 2) The lineup administrator randomly shuffles the folders; 3) The lineup administrator provides appropriate instructions about the procedure to the victim/witness; 4) The lineup administrator shows each folder to the victim/witness individually and sequentially while positioned in such a way that the lineup administrator cannot see and does not know which photograph is being viewed at any given moment; 5) After viewing the photograph contained in a folder, the victim/witness closes that folder and returns it to the lineup administrator; 6) If the victim/witness makes a positive identification, the lineup administrator obtains a confidence statement from the victim/witness and documents that confidence statement.

- f. All fillers selected should resemble the victim / witness description of the perpetrator (e.g., face, weight, build, skin tone, etc.) including any unique or unusual features (e.g., scars, tattoos, etc.).
- g. Suspect and fillers should be similar in appearance, fitting the description of the perpetrator as given by the victim/witness. Lineup administrators should avoid using fillers who so closely resemble the suspect that even someone familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
- h. 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 then resemble the suspect in significant features, taking into account any unique or unusual features such as scars, marks or tattoos.
- i. When conducting multiple lineups of more than one (1) suspect in an investigation with a single victim/witness, each filler should be used only once.
- j. When conducting a single lineup in an investigation with multiple victims / witnesses, each filler should be arranged in a different position from the previous lineup.
- k. Only one (1) victim/witness should view the lineup at a given time.
- l. The suspect and fillers should be randomly placed in the lineup, not systematically arranged.

- m. Lineup administrators should ensure that no writings or information concerning previous arrests or identifications will be visible to the victim/witness during the lineup.
- n. Photographs of juveniles should not be used as fillers in lineups containing adult suspects. Photographs of adults may be used as fillers in lineups containing juvenile suspects provided that they meet the appearance, content and reliability criteria set forth in this section.
- o. The person composing the lineup should view the lineup once it is completed to ensure that the suspect does not unduly stand out and appears only once in the lineup.
- p. If the victim/witness indicates that he/she recognizes or identifies someone in the lineup, law enforcement personnel should ask the circumstances from which the victim/witness recognizes the individual and how certain he/she is of his/her identification. If conducting a sequential lineup, law enforcement personnel should show the victim/witness the entire lineup even if he/she makes an identification during the presentation.

RECOMMENDATION #4: Regarding specific instructions to be given to the eyewitness before and during the lineup, the Task Force recommends that:

- a. Persons viewing a lineup should be told that:

- i. Whether or not an identification is made, the investigation will continue.
- ii. The entire lineup should be viewed before any identification is made.
- iii. The lineup is designed to clear the innocent as well as to ensure the accurate and reliable identification of the guilty.
- iv. The lineup may or may not contain the individual you are being asked to identify or who committed the crime now being investigated.
- v. You do not have to identify anyone in the lineup.
- vi. The fact that this lineup is being shown to you should not cause you to believe or guess that the guilty person has been caught.
- vii. You should keep in mind that persons in the lineup may not appear exactly as they did on the date of the crime as features such as head and facial hair are subject to change.
- viii. Photographs do not always depict the true complexion of a person who may be lighter or darker than shown in the photograph. You should study only the person shown in each photograph and pay no attention to variations in color, type or style of photograph.
- ix. You should not speak to any other victim/witness about the identification procedure or indicate in any way to any other

victim/witness that you have or have not made an identification.

b. Instructions given to the victim/witness should include some form of the following language:

- i. *The lineup will contain persons of similar description and in similar poses.*
- ii. *There is no significance to the order in which the persons appear.*
- iii. *During the process, no one is to give you any hints or suggestions, or attempt to influence your identification in any way.*
- iv. *You must view the entire lineup prior to making an identification.*
- v. *If you make an identification your choice will be documented.*
- vi. *If you make an identification you must state in your own words how certain you are of such identification.*

c. Instructions given to the victim/witness should be given in simple language and in their native or fluent tongue.

RECOMMENDATION #5: Regarding the taking of a “confidence statement” after an identification is made, the Task Force recommends that:

- a. Immediately after an identification is made, the victim/witness should be asked to state in their own words how certain they are of their identification.
- b. This “confidence statement” should be recorded in writing and signed by the victim/witness or otherwise memorialized. The time, date, place and persons present should also be included.¹⁵

RECOMMENDATION #6: Regarding the value of refraining from providing any confirmatory information to the eyewitness, the Task Force recommends that:

- a. After an identification is made, law enforcement personnel should refrain from providing confirmatory information to the eyewitness
- b. Law enforcement personnel should not provide the victim/witness with any feedback, in any manner, regarding his/her identification, or lack thereof, nor comment in any manner, verbally or by physical

¹⁵ A significant body of peer-reviewed research clearly indicates the importance of taking a “confidence statement” immediately after an identification is made, as subsequent post-identification feedback to the eyewitness artificially inflates the confidence of a witness in his or her identification and also contaminates the witness’s memory of the event. See, e.g., Bradfield, A. L., Wells, G. L., & Olson, E. A. (2002), *The Damaging Effect of Confirming Feedback on the Relation Between Eyewitness Certainty and Identification Accuracy*, *Journal of Applied Psychology*, 87, 112-120; and Wright, D. B., & Skagerberg, E. M., *Post-Identification Feedback Affects Real Eyewitnesses*, *Psychological Science*, 18, 172-178 (2007). In other words, In addition to the danger of confidence inflation and false certainty, when post-identification confirming feedback is provided to an eyewitness who has incorrectly identified an innocent person, it can produce “strong effects” on witnesses’ memory, including recollection of their opportunity to view the perpetrator and their degree of attention on the perpetrator. See, Wells, G.L., & Bradfield, A.L. (1998), ‘Good, You Identified the Suspect’: *Feedback to Eyewitnesses Distorts Their Reports of the Witnessing Experience*, *Journal of Applied Psychology*, 83, 360-376. This contaminating effect of confirming feedback, therefore, confounds the efforts of courts to assess the reliability of identification evidence, since it distorts and renders untrustworthy three of the five “reliability” factors enunciated in *Neil v. Biggers*, 409 U.S. 188 (1972) (a witness’s degree of certainty, opportunity to view the perpetrator at the time of the incident, and degree of attention on the perpetrator).

gesture, regarding the individual selected or on the outcome of the process.

- c. While law enforcement personnel should refrain from providing confirmatory information to the victim/witness, he/she should also be sensitive to any understandable concerns the victim/witness may have about their own or public safety.
- d. In order to protect the integrity of the eyewitness identification procedure while responding to any legitimate and understandable concerns expressed by the victim/witness after an identification is made, additional study, research and examination of the experiences of law enforcement in the field should be conducted in this area.

RECOMMENDATION #7: Regarding the use of sequential lineups versus non-sequential lineups, the Task Force recognizes that a substantial body of research has advocated for the use of sequential lineups as a “best practice” that reduces misidentification. The Task Force recommends that law enforcement agencies strongly consider the use of sequential lineups.¹⁶

¹⁶ While acknowledging the value of sequential lineups the Task Force also recognizes areas of disagreement. Compare, *REPORT TO THE LEGISLATURE OF THE STATE OF ILLINOIS: THE ILLINOIS PILOT PROGRAM ON SEQUENTIAL DOUBLE-BLIND LINEUP PROCEDURES (3/17/06) at p. 49, et seq.* (criticisms of sequential lineups), with *Report of the (Vermont) Eyewitness Identification and Custodial Interrogation Study Committee (12/14/07) at p. 8* (“...the Committee recommends that where at all possible, law enforcement agencies should employ sequential photo lineups with a blind administrator”) and *Response to Chicago Report on Eyewitness Identification Procedures, State of Wisconsin, Office of Attorney General, Wisconsin Department of Justice Bureau of Training and Standards For Criminal Justice (7/21/06) at p. 3.*

RECOMMENDATION #8: Regarding the documentation of the identification procedure, the Task Force recommends that:

- a. The following information should be preserved and become part of the case file:
 - i. Presentation of the lineup. A photographic lineup should be preserved in its original condition.
 - ii. Any lineup shown to a victim/witness by law enforcement personnel, whether or not an identification is made.
 - iii. A photograph of each participant in a physical lineup when such a procedure is used.
 - iv. Documentation of 1) how the identification procedure was conducted and the results of it, and 2) each victim/witness identification or lack thereof including the exact words used by each victim/witness viewing the lineup including the confidence statement.
 - v. When a sequential lineup is conducted law enforcement personnel should document the order in which the suspect and fillers were presented to the victim/witness.
 - vi. The time and place of the administration of the identification procedure.

("Scientific research demonstrates that sequential procedures reduce misidentifications). The Illinois, Vermont and Wisconsin reports and recommendations can all be found in APPENDIX 3. It is for this reason that the Task Force feels that additional and ongoing study and research in this area is required.

- vii. The names of the administrator of the identification procedure, the victim/witness viewing it, and any other persons present, as well as the name of the law enforcement personnel responsible for constructing the lineup.

RECOMMENDATION #9: Regarding the use of “showups,” the Task Force recommends that:

- a. In situations in which probable cause to arrest does not exist, but law enforcement personnel have temporarily detained a subject who matches a general eyewitness description, law enforcement personnel may conduct a showup for the following reasons:
 - i. To identify a potential suspect, or
 - ii. To immediately clear an innocent person from suspicion.
- b. Law enforcement personnel may detain a suspect where he/she is located, in the least restrictive manner possible that will ensure the presence of the suspect and the safety of law enforcement personnel for a reasonable time to confirm or refute whether the subject is the perpetrator.
 - i. Law enforcement personnel should not display suspects detained in a cruiser or patrol car.
 - ii. If possible and safe, law enforcement personnel should not restrain or handcuff the suspect unless the handcuffs can be concealed. When circumstances dictate that a suspect must

be controlled and/or separated from the victim/witness, law enforcement personnel must take practical steps to minimize the suggestiveness of the procedure.

- iii. Showups should not occur at a barracks, police station or other law enforcement building.
- c. Whenever practical, law enforcement personnel should transport the victim/witness to the suspect (as opposed to transporting the suspect to the victim/witness). Law enforcement personnel should notify his/her supervisor that he/she is transporting a victim/witness for the purpose of an eyewitness identification.
- d. Law enforcement personnel should instruct the victim/witness, prior to the showup, that the suspect being detained may or may not be the perpetrator and that the victim/witness should not feel compelled to make an identification.
- e. Law enforcement personnel should refrain from using words or conduct of any type that may suggest to the victim/witness that the individual is or may be the perpetrator.
- f. If the victim/witness makes an identification, law enforcement personnel should not confirm or corroborate the identification. Law enforcement personnel should discreetly advise the detaining authority or officer of the victim/witness's response or identification.
- g. If the victim/witness indicates that he/she recognizes or identifies the suspect, law enforcement personnel should ask the

circumstances from which the victim/witness recognizes the individual and how certain he/she is of his/her identification and the statement of the victim/witness in response should be documented.

- h. In the case of multiple victims/witnesses, showups should not be conducted with more than one victim/witness at a time. When feasible, after one witness makes an identification during a showup, that identification should provide probable cause for an arrest and the remaining witnesses should ordinarily be shown a lineup rather than participate in a showup.
- i. In the case of multiple suspects, the victim/witness should view each suspect in separate showups conducted in accordance with these procedures.
- j. Whenever possible, law enforcement personnel should photograph the suspect at the time of the showup.
- k. Law enforcement personnel should document each victim/witness's identification or lack thereof in a report in their case file.

RECOMMENDATION #10: Regarding training, the Task Force recommends that:

- a. The Rhode Island Municipal Police Training Academy should develop a training curriculum, incorporating the recommendations of this report as well as other issues related to eyewitness identification.

- b. The training curriculum developed by the Rhode Island Municipal Police Training Academy should be made available to all Rhode Island law enforcement agencies through a "Train the Trainer" format.
- c. All law enforcement officers in Rhode Island shall receive the training regarding eyewitness identification no later than June 30, 2012.

Recommendation #11: Pursuant to *R.I.G.L. § 12-1-16*, the Task Force shall currently terminate upon delivery of its report but no later than January 1, 2011. The Task Force recommends that:

- a. Its term be extended for a period of sixteen (16) months.
- b. The Task Force should reconvene in January, 2012 to:
 - i. assess the impact of the recommendations made in this report;
 - ii. conduct further research in the area of eyewitness identification;
 - iii. specifically assess the use of sequential and simultaneous lineups by Rhode Island law enforcement agencies; and
 - iv. consider whether, in light of that experience, the use of sequential lineups should be recommended as a "best practice".
- c. A supplemental report from the Task Force shall be delivered in the same manner as this report not later than April 30, 2012. Pursuant to

this recommendation, the Task Force has drafted an amendment to *R.I.G.L. § 12-1-16*.¹⁷

¹⁷ APPENDIX 1: Amendments to *R.I.G.L. §12-1-16* proposed by the Task Force.

Respectfully Submitted,

THE TASK FORCE TO IDENTIFY & RECOMMEND POLICIES & PROCEDURES TO IMPROVE THE ACCURACY OF EYEWITNESS IDENTIFICATION: Rhode Island General Laws §12-1-16.

BY:

- Gerald J. Coyne
Deputy Attorney General
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Rhode Island Association of Criminal Defense Lawyers
- Ross E. Cheit, JD, PhD
Associate Professor of Political Science & Public Policy
Brown University
- Michael D. Evora, Esq., Executive Director
Rhode Island Commission for Human Rights

APPENDIX [CD - ROM]

- 1) *R.I.G.L. §12-1-16*; Amendments to *R.I.G.L. §12-1-16* proposed by the Task Force.
- 2) Minutes of Task Force Meetings held on August 12, 2010; August 27, 2010; September 17, 2010; September 29, 2010; November 22, 2010; December 9, 2010; and December 20, 2010. Additional supporting materials provided to the Task Force by Dr. Berman, Detective Captain Patenaude, and Attorney Edwards.
- 3) Reports of the study committees, task forces, “best practice” recommendations and written policies from the following states and localities: Georgia; Illinois; New Jersey; Vermont; Wisconsin; Suffolk County, Massachusetts District Attorney’s Office and Boston Police Department; Santa Clara County, California Police Department; and Northampton, Massachusetts Police Department.
- 4) Report of the Special Master in *State v. Henderson*.
- 5) Written policies of the Bristol, Cumberland, and Warwick Police Departments and the Rhode Island State Police regarding eyewitness identification procedures.
- 6) Miscellaneous information made available to the Task Force.
 - Correspondence
 - 7/8/10: John J. Hardiman, Public Defender to Gerald J. Coyne, Deputy Attorney General and Task Force members
 - 7/13/10: Gerald J. Coyne, Deputy Attorney General to John J. Hardiman, Public Defender
 - 7/30/10: John J. Hardiman, Public Defender and Gerald J. Coyne, Deputy Attorney General to Task Force members